

# भारत का राजपत्र

## The Gazette of India

प्रसारण  
EXTRAORDINARY

भाग II—खण्ड-2

PART II—Section 2.

प्राधिकार से प्रकाशित

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह भलग संकलन के क्षेत्र में रखा जा सके।

Separate paging is given to this Part in order that it may be filed  
as a separate compilation.

### LOK SABHA

The following Bills were introduced in Lok Sabha on the 22nd July, 1968:—

#### BILL NO. 56 OF 1968

A Bill to provide, in the economic and financial interests of the community, for the control of the production, manufacture, supply, distribution, use and possession of, and business in, gold, ornaments and articles of gold and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Nineteenth Year of the Republic of India as follows:—

#### CHAPTER I

#### PRELIMINARY

1. (1) This Act may be called the Gold (Control) Act, 1968.

(2) It extends to the whole of India.

(3) It also applies to the citizens of India outside India.

Short  
title,  
extent  
and appli-  
cation.

**Definitions.**

2. In this Act, unless the context otherwise requires,—

(a) "Administrator" means the Administrator appointed under section 4;

(b) "article" means any thing (other than ornament), in a finished form, made of, manufactured from or containing, gold, and includes—

(i) any gold coin,

(ii) broken pieces of an article,

but does not include primary gold;

(c) "artisan" means a person (other than a certified goldsmith) who is employed by a licensed dealer, whether on cash or deferred payment or on commission, remuneration or other valuable consideration, to make, manufacture, prepare, repair, polish or process any article or ornament or to melt, process or convert gold for the purpose of making, manufacturing, preparing, repairing or processing any article or ornament;

(d) "certified goldsmith" means a self-employed goldsmith who holds a valid certificate, referred to in section 40;

(e) "coin" means a thing which is stamped and issued by or on behalf of Government or by any other authority in exercise of its sovereign power in order to be used for the time being as money, whether such coin is a current coin or not;

(f) "commencement of Part XIIA of the Defence of India Rules, 1962" means the day on which that Part was initially inserted into the Defence of India Rules, 1962, that is to say, the tenth day of January, 1963;

(g) "company" means a company as defined in section 3 of the Companies Act, 1956, and includes a foreign company as defined in section 591 of the said Act;

(h) "dealer" means any person who carries on, directly or otherwise, the business of making, manufacturing, preparing, repairing, polishing, buying, selling, supplying, distributing, melting, processing or converting gold, whether for cash or for

deferred payment or for commission, remuneration or other valuable consideration, and includes—

(i) a Hindu undivided family which carries on such business;

21 of 1860. (ii) a local authority, company, society registered under the Societies Registration Act, 1860, co-operative society incorporated under any law with respect to co-operative societies, club, firm or other association of persons which carries on such business, or—

(a) buys or accepts gold (for the purpose of making ornaments) from,

(b) makes, manufactures, prepares, repairs or polishes ornaments for,

(c) processes, melts or converts gold (for the purpose of making ornaments) for,

(d) sells, supplies or distributes ornaments or other gold (for the purpose of making ornaments) to,

its members;

(iii) a commission agent, broker, *del credere* agent, auctioneer or other mercantile agent, by whatever name called, who carries on such business on behalf of any principal,

33 of 1959. but does not include the Reserve Bank of India, the State Bank of India, any subsidiary bank as defined in clause (k) of section 2 of the State Bank of India (Subsidiary Banks) Act, 1959, by any banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 in so far as such bank sells or transfers, or exhibits for sale or transfer, any gold.

10 of 1949. *Explanation.*—For the purposes of this Act—

(a) every person who acts as an agent of a dealer residing outside India and carries on the business of such dealer in India or acts on behalf of such dealer as—

3 of 1930. (i) a mercantile agent as defined in the Sale of Goods Act, 1930, or

(ii) an agent for handling gold or documents of title relating to gold, or

(iii) an agent for the collection or payment of sale price of gold or as a guarantor for such collection or payment; and

(b) every branch in India of a firm or company having its registered office outside India, if such firm or company is a dealer,

shall be deemed to be a dealer;

(i) "declaration" means a declaration which is required by this Act or was required by rule 126-I of the Defence of India Rules, 1962, or the Gold (Control) Ordinance, 1968, to be made ~~of 1968.~~ with regard to the ownership, possession, custody or control of gold;

(j) "gold" means gold, including its alloy (whether virgin, melted or re-melted, wrought or unwrought), in any shape or form, of a purity of not less than nine carats and includes primary gold, article and ornament;

(k) "gold coin" means a coin made of gold of any purity, whether such purity exceeds nine carats or not;

(l) "Gold Control Officer" means a Gold Control Officer appointed under section 4;

(m) "licensed dealer" means a dealer who holds a valid licence granted under section 18 authorising him to carry on business as a dealer;

(n) "licensed refiner" means a refiner who holds a valid licence granted under section 28 authorising him to carry on business as a refiner;

(o) "notification" means a notification published in the Official Gazette;

(p) "ornament" means a thing, in a finished form, meant for personal adornment or for the adornment of any idol, deity or any other object of religious worship, made of, or manufactured from, gold, whether or not set with stones or gems (real or artificial), or with pearls (real, cultured or imitation) or with all or any of them, and includes parts, pendants or broken pieces of ornament.

*Explanation.*—For the purposes of this Act, nothing made of gold, which resembles an ornament, shall be deemed to be an ornament unless the thing (having regard to its purity, size, weight, description or workmanship) is such as is commonly used as ornament in any State or Union territory;

(q) "prescribed" means prescribed by rules made under this Act;

(r) "primary gold" means gold in any unfinished or semi-finished form and includes ingots, bars, blocks, slabs, billets, shots, pellets, rods, sheets, foils and wires;

(s) "refiner" means a person who, being the owner, lessee or occupier of a refinery, is engaged in the business of melting, assaying, refining, alloying or extracting gold from any ore, salt or chemicals or subjecting it to any other process;

(t) "refinery" means a place where gold is melted, assayed, refined, alloyed or extracted from any ore, salt or chemicals or subjected to any other process for the purpose of making primary gold and includes a place where gold is assayed at the request of any dealer or other person, whether for the purpose of making primary gold or not, but does not include a place where gold is melted, alloyed or subjected to any other process by a licensed dealer or his artisan or a certified goldsmith for the purpose of making, manufacturing, preparing, repairing, polishing or processing any article or ornament;

(u) "standard gold bar" means primary gold of such fineness, dimensions, weight and description and containing such particulars as may be prescribed;

(v) "value", in relation to primary gold, article or ornament, means,—

(i) when the gold is seized under this Act, the market price of such gold as on the date of the seizure thereof,

(ii) when the gold is not available for seizure, the market price of such gold as on the date on which the notice referred to in section 80 is issued.

*Explanation.—*"market price",—

(i) in relation to gold seized, means the price at which such gold is ordinarily sold or offered for sale at, or near to, the place of seizure; and

(ii) in relation to any other gold, means the price at which such gold is ordinarily sold or offered for sale at, or near to, the place where the offence in relation to that gold is detected.

3. Nothing in this Act shall apply to, or in relation to,—

(a) any gold belonging to, or in the possession, custody or control of, Government or the Reserve Bank of India,

(b) any melting, assaying, refining, alloying or extracting of gold done by Government in any refinery owned or occupied by Reserve Bank.

Act  
not to apply  
to gold  
belonging  
to Gov-  
ernment  
or the  
Reserve  
Bank.

it, for the purpose of making or manufacturing primary gold for its own use or for the use of the Reserve Bank of India.

## CHAPTER II

### ADMINISTRATOR AND GOLD CONTROL OFFICERS

**Appoint-  
ment and  
functions of  
Administrator and  
Gold  
Control  
Officers.** 4. (1) The Central Government shall, by notification, appoint an Administrator for carrying out the purposes of this Act.

(2) The Central Government may, by notification, appoint as many persons as it thinks fit to be Gold Control Officers for the purpose of enforcing the provisions of this Act.

(3) The Administrator shall discharge his functions subject to the general control and directions of the Central Government.

(4) The Administrator may authorise such person as he thinks fit to also exercise all or any of the powers exercisable by him under this act and different persons may be authorised to exercise different powers.

(5) Subject to any general or special direction given or condition imposed by the Administrator, any person authorised by the Administrator to exercise any powers may exercise those powers in the same manner and with the same effect as if they had been conferred on that person directly by this Act and not by way of authorisation.

(6) The Administrator may also—

(a) perform all or any of the functions of, and

(b) exercise all or any of the powers conferred by this Act or any rule or order made thereunder on,

any officer lower in rank than himself.

(7) A Gold Control Officer shall, subject to such limitations, restrictions and conditions as the Central Government may think fit to impose, exercise such powers and discharge such functions as are specified or conferred, as the case may be, by or under this Act.

**Power of  
Administrator  
to issue  
directions  
and  
orders.** 5. (1) The Administrator may, if he thinks fit, make orders, not inconsistent with the provisions of this Act, for carrying out the provisions of this Act.

(2) The Administrator may, so far as it appears to him to be necessary or expedient for carrying out the provisions of this Act, by order—

(a) regulate, after consultation with the Reserve Bank of India, the price at which any gold may be bought or sold, and

(b) regulate by licences, permits or otherwise, the manufacture, distribution, transport, acquisition, possession, transfer, disposal, use or consumption of gold.

6. (1) The Administrator may, if he is of opinion that it is necessary in the public interest so to do, require any person who lends or advances money on the hypothecation, pledge, mortgage or charge of any article or ornament to make to him, in such form and within such time as may be specified, a return as to the receipt, delivery or sale of such article or ornament and as to the persons from whom they were received or, as the case may be, to whom they were delivered or sold.

Power of Administrator to call for returns as to receipt or sale of hypothecated gold.

(2) The Administrator may, by order, authorise any Gold Control Officer to examine the accounts relating to the receipt, delivery or sale of any gold, of any person who advances any money on the hypothecation, pledge, mortgage or charge of any article or ornament, and if any gold is found in the possession of such person which is not entered in such accounts or which is in excess of the quantity shown in such accounts, and which is not otherwise accounted for to the satisfaction of such officer, such gold shall be deemed to be in the possession of such person in contravention of the provisions of this Act.

7. The Administrator, a Gold Control Officer, and any person authorised by the Administrator or the Central Government and performing any functions under this Act, shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Administrator, etc., to be public servants.

Central Government may perform functions and exercise powers of Administrator.

Restrictions regarding acquisition, possession and disposal of gold.

45 of 1860.

8. The Central Government may also perform all or any of the functions of the Administrator and may also by notification, exercise all or any of the powers conferred by this Act on the Administrator if that Government is of opinion that it is necessary or expedient in the public interest so to do.

### CHAPTER III

#### RESTRICTIONS RELATING TO THE MANUFACTURE, ACQUISITION, POSSESSION, SALE, TRANSFER OR DELIVERY OF GOLD

9. (1) Save as otherwise provided in this Act, no person shall—

(i) own or have in his possession, custody or control, or

(ii) acquire or agree to acquire the ownership, possession, custody or control of, or

(iii) buy, accept or otherwise receive or agree to buy, accept or otherwise receive, any primary gold.

(2) A person—

(a) may, subject to the provisions of section 17,—

(i) acquire or agree to acquire the ownership, possession, custody or control of, or

(ii) buy, accept or otherwise receive or agree to buy, accept or otherwise receive, or

(iii) sell, deliver, transfer or otherwise dispose of, any ornament which is not required to be included in a declaration;

(b) shall not,—

(i) acquire or agree to acquire the ownership, possession, custody or control of, or

(ii) buy, accept or otherwise receive, or agree to buy, accept, buy or otherwise receive, or

(iii) sell, deliver, transfer or otherwise dispose of, or agree to sell, deliver, transfer or otherwise dispose of,

any ornament which is required to be included in a declaration unless such ornament has been included in a declaration which has been duly made by the person who intends to sell, deliver, transfer or otherwise dispose of such ornament.

(3) Save as otherwise provided in this Act, no person shall—

(a) acquire, or agree to acquire, the ownership, possession, custody or control of, or

(b) buy, accept or otherwise receive, or agree to buy, accept or otherwise receive,

any article, except by succession, intestate or testamentary.

(4) Save as otherwise provided in this Act, no person shall sell, deliver, transfer or otherwise dispose of, or agree to sell, deliver, transfer or otherwise dispose of, any article to a person who is not a licensed dealer or refiner:

Provided that a person may deliver an article to a certified goldsmith for the purpose of repairing or polishing or for the purpose of getting one or more ornaments made, manufactured or prepared therefrom:

Provided further that no such sale, delivery, transfer or disposal of any article shall be made—

(i) where such article is required to be included in a declaration unless such article has been included in a declaration

which has been duly made by the person who intends to sell, deliver, transfer or otherwise dispose of the same, or

(ii) where such article is not required to be included in a declaration, unless the sale, delivery, transfer or disposal thereof has been authorised by the Administrator.

(5) Notwithstanding anything contained in sub-sections (3) and (4), a person may accept or transfer, by way of gift or exchange, gold coins, not exceeding five in number, if, together with the gold coins received by way of gift or exchange, the total holding of gold coins of the donee or transferee, as the case may be, does not exceed fifty grammes.

(6) Notwithstanding anything contained in this section, the Administrator may, if he is of opinion that the special circumstances of any case or class of cases so require, authorise any person or class of persons to buy or otherwise acquire, accept, or otherwise receive, or sell, deliver, transfer or otherwise dispose of, any primary gold or article.

10. (1) Every person who acquires gold under any authorisation made by the Administrator shall observe such conditions and be subject to such restrictions as may be specified therein and shall furnish to the Administrator an account of such gold, if so required by the Administrator.

(2) No person receiving, accepting, buying or otherwise acquiring gold in accordance with any authorisation made by the Administrator shall—

(i) sell, deliver, transfer or otherwise dispose of, or agree to sell, deliver, transfer or otherwise dispose of, or

(ii) expose or offer for sale, delivery, transfer, or disposal of, of such gold, except in accordance with such authorisation.

11. No person shall obtain from any other person any loan or advance on the hypothecation, pledge, mortgage or charge of—

(a) any primary gold, or

(b) any article or ornament which is required to be included in a declaration unless such article or ornament has been so included:

Provided that, in the case of an article which is not required to be included in a declaration, no transfer or delivery thereof shall be made unless such transfer or delivery has been authorised by the Administrator.

**Prohibition regarding making, manufacturing, etc., of primary gold, articles, ornaments, etc.**

12. (1) Save as otherwise provided in this Act, no person shall—  
 (a) make, manufacture, prepare or process, any primary gold, or  
 (b) make, manufacture, prepare, repair, polish or process, any ornament, or  
 (c) make, manufacture, prepare, repair, polish or process, any article, or  
 (d) make, manufacture or prepare anything containing gold of any purity, whether such purity exceeds nine carats or not, or  
 (e) melt, assay, refine, alloy or extract gold of any purity, whether such purity exceeds nine carats or not, or subject such gold to any other process,

unless he is authorised so to do by the Administrator.

(2) Every authorisation made under sub-section (1) shall be subject to such conditions (including conditions as to the payment of any fee or charges of supervision) and restrictions as may be specified therein.

## CHAPTER IV

### POSSESSION OF GOLD BY PUBLIC RELIGIOUS INSTITUTIONS

**Ban on possession of primary gold when not to apply to primary gold which forms a part of structure, etc., of public religious institutions.**

13. Nothing in clause (i) of sub-section (1) of section 9 shall apply to any primary gold which forms part of any structure or any other construction or appendage within the precincts of a temple, church, mosque, gurdwara or any other place of public religious worship if such primary gold has been included in a declaration.

14. Notwithstanding anything contained in this Act, a public religious institution may receive gold as offerings:

Disposal  
of gold  
received  
as offer-  
lings.

Provided that—

(a) where any article is received by such institution, as an offering, such article may be—

(i) kept by such institution for its use, or

(ii) sold to a licensed dealer or refiner, or

(iii) converted into ornaments for the deity or idol, or

(iv) converted, with the previous permission of the Administrator, into any new article which may be required for worship in the institution or for use in, or decoration of, the structure or other construction or appendage within the precincts of the institution;

(b) where any primary gold is received by such institution, as an offering, the institution shall dispose of such primary gold by—

(i) converting the same, with the previous permission of the Administrator, into ornaments for the deity or idol, or into new articles which may be required for worship in the institution or for use in, or decoration of, the structure or other construction or appendage within the precincts of the institution, or

(ii) selling the same to such licensed dealer or refiner as may be specified, and under such conditions, limitations and restrictions as may be imposed, by the Administrator.

15. Without prejudice to the provisions of Chapter V, every public religious institution shall submit, in such form and in such manner as may be prescribed, to the Administrator monthly accounts of gold received by it as offerings and disposed of by it.

Submis-  
sion of  
monthly  
accounts.

16. The person in charge of the management of any public religious institution shall be responsible for anything done or omitted to be done by such institution in relation to any gold.

Respon-  
sibility of  
the per-  
son in  
charge  
of public  
religious  
institu-  
tion.

## CHAPTER V

### DECLARATIONS

17. (1) Same as otherwise provided in this Chapter, every person who owns, or is in possession, custody or control of, any article or ornament at the commencement of this Act, or acquires the ownership, possession, custody or control of any article or ornament there-

Declar-  
ations as to  
articles  
or orna-  
ments.

after, shall make, within thirty days from such commencement or from such acquisition, as the case may be, or within such further period as the Administrator may, on sufficient cause being shown allow, a declaration in the prescribed form as to the quantity, description and other prescribed particulars of any article, or ornament, or both, owned, possessed, held or controlled by him:

Provided that no such declaration shall be required to be made where a person who, having owned, possessed, held or controlled any article or ornament before the commencement of this Act, has already made a declaration in relation to that article, or ornament, or both:

Provided further that nothing in this sub-section shall be construed as enabling any declaration to be made in respect of any gold for which the period prescribed or allowed under the law for the time being in force before the commencement of this Act had expired before such commencement.

(2) For the removal of doubts, it is hereby declared that the declaration referred to in this section shall be made, in relation to any article, or ornament, or both,—

(a) owned by minor or a lunatic, by the guardian or manager of such minor or lunatic, as the case may be;

(b) owned by an idol or a deity, by the manager of such idol or deity, whether known as shebait or manager or by any other name;

(c) owned, possessed, held or controlled by a person whose properties are under the management of any administrator or receiver, by such administrator or receiver;

(d) owned, possessed, held or controlled by a person whose properties are under the management of a Court of Wards, by the manager of such Court;

(e) vested in an executor or an administrator of a will or other testamentary disposition, by such executor or administrator;

(f) owned, possessed held or controlled by the members of a firm, by any partner of such firm;

(g) owned, possessed, held or controlled by a Hindu undivided family, by the head or karta of such family;

(h) which is the subject-matter of any public or private trust, by the trustee of such trust;

(i) owned, possessed, held or controlled by a company, whether incorporated in or outside India, by any person in charge of the management of the affairs of such company;

(j) belonging to a temple, church, mosque, gurdwara or any other religious institution, by the person in charge of the management of such temple, church, mosque, gurdwara or other religious institution;

(k) which is wakf property, by the mutawalli of such wakf;

(l) owned, possessed, held or controlled by any society, club or other association, by the secretary or manager of such society, club or other association;

(m) owned, possessed, held or controlled by any other person, by such person as may be prescribed.

(3) If any person who did not own, possess, hold or control, before the commencement of this Act, any quantity of gold in excess of the quantities specified in sub-section (5), acquires, after such commencement, the ownership (whether by succession, intestate or testamentary, or otherwise), possession, custody or control of any gold and if, as a result of such acquisition, the total quantity of gold owned, possessed, held or controlled by such person exceeds the quantities specified in sub-section (5), such person shall, within thirty days from the date of such acquisition or within such further period as the Administrator may, or sufficient cause being shown, allow, make a declaration in the prescribed form stating the total quantity, description and other prescribed particulars of—

(a) the gold owned, possessed, held or controlled by him immediately after such acquisition, and

(b) the person from whom the ownership, possession, custody or control of such gold was acquired.

(4) If any person who has made a declaration, whether under sub-section (1) or under sub-section (3) or under Part XIA of the Defence of India Rules, 1962, or under the Gold (Control) Ordinance, 1968, as to gold owned, possessed, held or controlled by him, acquires (whether by succession, intestate or testamentary, or otherwise), or parts with, after such declaration, the ownership, possession, custody or control of any quantity of gold, he shall, as often as he acquires or parts with the ownership, possession, custody or control of any quantity of gold, make, within thirty days from the date of such acquisition or parting with, or within such further period as the Administrator may, on sufficient cause being shown, allow, a further declaration in the prescribed form stating the quantity, description and other prescribed particulars of the gold in relation to which such ownership, possession, custody or control has been acquired or parted with by him and giving the prescribed particulars of the person from whom the ownership, possession, custody or control of such gold was

acquired or in whose favour the ownership, possession, custody or control of such gold was parted with, as the case may be.

(5) No declaration referred to in sub-section (1) or sub-section (3) shall be required to be made,—

(a) in relation to articles, unless the total weight of articles owned, possessed, held or controlled by,—

(i) a minor, who is not a member of a family, exceeds twenty grammes,

(ii) an individual (other than a minor), who is not a member of a family, exceeds fifty grammes,

(iii) a family, exceeds fifty grammes,

(iv) any person referred to in clauses (b) to (f) and (h) to (m) of sub-section (2), exceeds fifty grammes;

(b) in relation to any ornaments, or both articles and ornaments, where both articles and ornaments are owned, possessed, held or controlled, unless the total weight of such ornaments or both articles and ornaments, as the case may be, owned, possessed, held or controlled by,—

(i) a minor, who is not a member of a family exceeds eight hundred grammes,

(ii) an individual (other than a minor) who is not a member of a family, exceeds two thousands grammes,

(iii) a family, exceeds four thousand grammes;

Provided that where the composition of a family is such that if the quantities specified in sub-clauses (i) and (ii) are taken into account in relation to any ornament, or both article and ornament owned, possessed, held or controlled by each individual member of such family, the aggregate of such quantities would be less than four thousand grammes but more than the aggregate of the quantities specified in those sub-clauses, then, such family shall be required to make a declaration under sub-section (1) or sub-section (3), as the case may be, notwithstanding that the aggregate of the ornaments, or both articles and ornaments, owned, possessed, held or controlled by the members of such family does not exceed four thousand grammes;

(c) in relation to any ornaments, or both articles and ornaments, owned, possessed, held or controlled by any person referred to in clauses (b) to (f) and (h) to (m) of sub-section (2), unless the total weight of such ornaments, or both articles and ornaments, exceeds two thousand grammes.

(6) For the purposes of this section, "family" shall be deemed to consist of—

- (i) the husband, wife and one or more minor children, or
- (ii) any two or more of them,

but shall not be deemed to include any other person.

(7) Every licensed dealer or refiner shall make a declaration or further declaration, as the case may be, in accordance with the provisions of this section in relation to any gold owned, possessed, held or controlled by him in any capacity other than the capacity of a licensed dealer or refiner and the provisions of sub-section (5) shall not apply to such gold.

*Explanation.*—Where the licensed dealer or refiner is a company or other body corporate or a firm, every director of such company or body corporate or, as the case may be, every partner of such firm shall make a declaration in respect of the gold owned, possessed, held or controlled by him in any capacity.

• (8) Every declaration made under this section shall be made in triplicate, of which one copy shall be authenticated and signed by the Gold Control Officer and thereafter shall be returned to the person making the declaration and the copy so returned shall be retained by such person as evidence of the declaration made by him under this section.

(9) Every declaration made under this section shall be kept by the Gold Control Officer in safe custody and the particulars thereof shall be entered in a register to be maintained for this purpose.

(10) A person who has made a declaration shall, as often as he acquires or parts with, after such declaration the ownership, possession, custody or control of any quantity of gold, endorse, such acquisition, or parting with, of gold, in such manner as may be prescribed, on the copy of the declaration retained by him, and shall also produce such copy, within seven days from the date of such endorsement, before the Gold Control Officer, who shall make necessary changes in the register referred to in sub-section (9) and also in the copy of the declaration kept in his safe custody.

(11) No person shall own or have in his possession, custody or control **any** quantity of gold which is required to be included in a declaration unless such gold has been included in a declaration or further declaration, as the case may be:

Provided that nothing in this sub-section shall apply until the expiry of the period within which a person is entitled to make a declaration or further declaration.

(12) A person upon whom a penalty has been imposed or whose gold has been confiscated under the provisions of Chapter XIII for failure to make a declaration shall, if so directed by the authority adjudging the penalty or confiscation, make a declaration within such time as may be specified in the direction.

(13) Where the period prescribed or allowed under the law in force immediately before the commencement of this Act, for any declaration to be made in respect of any gold, had not expired before such commencement, the declaration may be made within the period prescribed or allowed under such law.

## CHAPTER VI

### REFINERS

#### Licensing of refiners.

18. (1) Save as otherwise provided in this Act, no person shall either establish a refinery or carry on business as a refiner unless he holds a valid licence issued in this behalf by the Administrator.

(2) A licence issued under this section,---

- (a) shall be in such form as may be prescribed,
- (b) shall be valid for such period as may be specified therein
- (c) may be renewed, from time to time, and
- (d) may contain such conditions, limitations and restrictions as the Administrator may think fit to impose and different conditions, limitations and restrictions may be imposed for different classes of refiners.

(3) Every licence issued under Part XIIA of the Defence of India Rules, 1962, or under the Gold (Control) Ordinance, 1968, authorising the establishment of a refinery or carrying on of business as a refiner, shall, if in force immediately before the commencement of this Act, continue to be in force until the expiry of the period of its validity or until the cancellation thereto, whichever is earlier.

(4) A person who holds, at the commencement of this Act, a valid licence authorising him to establish a refinery or to carry on business as a refiner shall, if he intends to continue such business after the expiry of the period of its validity, make, at least one month before the expiry of such period, an application (in such form

and on payment of such fees, not exceeding one hundred rupees, as may be prescribed) for the renewal of such licence.

(5) A person who intends to establish or commence, after the commencement of this Act, a refinery or business as a refiner, shall make an application (in such form and on payment of such fees, not exceeding one hundred rupees, as may be prescribed) for the issue of a licence.

(6) On receipt of an application for the issue or renewal of a licence under this section, the Administrator may, after making such inquiry, if any, as he may consider necessary, by order in writing, either issue or renew the licence, or reject the application for the same:

Provided that no licence shall be issued or renewed under this section unless the Administrator, having regard to the following matters, is satisfied that the licence should be issued or renewed, namely:—

(a) the number of refineries existing in the region in which the applicant intends to carry on business as a refiner,

(b) the anticipated demand, as estimated by him for refining facilities in that region,

(c) the facilities existing in that region for the assay of gold by any method other than the touch-stone method,

(d) the turnover of the applicant, if he is already carrying on business as a refiner, during two years immediately preceding the date of application for the renewal of the licence,

(e) the suitability and security of the premises where the applicant intends to carry on business as refiner, and the existence therein of arrangements for the storage of gold before and after refining,

(f) the existence or the probability of existence in the refinery or the proposed refinery, as the case may be, of equipment for the manufacture of standard gold bars and the quality and adequacy of such equipment,

(g) the competence of the applicant to manufacture standard gold bars,

(h) the existence of facilities in the refinery for the exercise of supervision and control by the Administrator, or any other person authorised by him in this behalf,

(i) the existence of any refinery established or run by Government,

- (j) the suitability of the applicant,
- (k) the public interest, and
- (l) such other matters as may be prescribed.

(7) Any person to whom a licence has been issued or renewed under this section shall comply with the provisions of every law, rule, regulation or bye-law for the time being in force relating to refineries.

(8) A person to whom a licence to carry on business as a refiner is issued under this section shall not carry on business as such refiner in the same premises in which he or any other person carries on business, whether as a dealer or otherwise or as a money-lender or banker who lends or advances money on the hypothecation, pledge mortgage or charge of any gold.

(9) Every licensed refiner shall ensure that every person employed by him in the refinery complies, in the course of such employment, with the provisions of this Act or any rule or order made thereunder and of any other law relating to gold or foreign exchange for the time being in force.

Refiner to make standard gold bars only.

19. (1) A licensed refiner may make or manufacture standard gold bars but shall not, unless authorised by the Administrator so to do, make, manufacture or prepare primary gold in any other form:

Provided that such refiner may, in the process of manufacturing standard gold bars, make, manufacture or prepare primary gold.

(2) Unless authorised by the Administrator so to do, a licensed refiner shall not make, manufacture, prepare, repair or polish any article or ornament.

Standard gold bar to be stamped.

20. (1) Every licensed refiner, who makes, manufactures or prepares standard gold bars shall put a stamp on each such gold bar certifying its purity and such stamp shall also contain such other particulars as may be prescribed.

(2) No stamp referred to in sub-section (1) shall be used in stamping any standard gold bar unless such stamp has been approved by the Administrator.

Acquisition of gold by a refiner.

21. Subject to the provisions of section 9, a licensed refiner may buy or otherwise acquire or accept or otherwise receive primary gold, article or ornament from a person for the purpose of refining such gold for making, manufacturing or preparing standard gold bars therefrom.

**22.** Save as otherwise provided in this Act, no licensed refiner shall sell, deliver, transfer or otherwise dispose of gold in any form, other than in the form of standard gold bars and no such sale, delivery, transfer or disposal shall be made to any person other than a licensed dealer or refiner or certified goldsmith:

Sale or delivery of gold by a refiner.

Provided that a licensed refiner may sell standard gold bars to any person on production by that person of a permit granted by the Administrator in this behalf or to such other person as the Administrator may authorise in this behalf.

**23.** A licensed refiner shall not—

Licensed refiner to comply with conditions, etc.

(i) buy or otherwise acquire or accept or otherwise receive,

or

(ii) melt, assay, refine, alloy or extract gold or subject it to any other process, or

(iii) sell, deliver, transfer or otherwise dispose of, any gold, except under such conditions, limitations and restrictions as may be prescribed.

**24.** Except in the case of any quantity of gold acquired, accepted, bought or received after the date of making of any return referred to in section 57, no licensed refiner shall, in his capacity as such refiner, either own or have in his possession, custody or control any gold which has not been included in such return:

Prohibition regarding possession of gold not included in any return.

Provided that any gold acquired, accepted, bought or received after the date of making such return shall be included in the next succeeding return.

**25.** Save as otherwise provided in this Act, no licensed refiner shall keep in his refinery any primary gold, article or ornament which is not a part of his stock-in-trade or held by him in his capacity as a refiner and every primary gold, ornament or article found in such refinery shall be deemed to be a part of his stock-in-trade or held by him in his capacity as a refiner.

Licensed refiner not to keep in a refinery any gold which is not a part of his stock-in-trade.

**26.** If a refiner carries on, in the same premises, the business of refining silver or other metal, he shall carry on the business of refining gold in such part of the premises and under such conditions, limitations and restrictions as may be specified by the Administrator.

Gold where to be refined when silver, etc., is also refined in the same premises.

Silver  
refiner  
to keep  
record  
of gold  
recovered  
from  
such  
refining.

27. Every person who refines or melts silver, including its alloys, shall—

- (a) maintain a record of gold, if any, recovered from such refining or melting;
- (b) declare on or before the fifth day of each month, in such form as may be prescribed, the quantity of gold so recovered during the month immediately preceding;
- (c) sell such gold within a period of thirty days from the date of such declaration or within such further period as, on sufficient cause being shown, may be allowed by the Administrator, to a licensed refiner or, if so authorised by the Administrator, to a licensed dealer.

## CHAPTER VII

### DEALERS

Licensing  
of  
dealers-

28. (1) Save as otherwise provided in this Act, no person shall commence, or carry on, business as a dealer unless he holds a valid licence issued in this behalf by the Administrator.

(2) A licence issued under this section,—

- (a) shall be in such form as may be prescribed,
- (b) shall be valid for such period as may be specified therein,
- (c) may be renewed, from time to time, and
- (d) may contain such conditions, limitations and restrictions as the Administrator may think fit to impose and different conditions, limitations and restrictions may be imposed for different classes of dealers.

(3) Every licence issued under Part XIIA of the Defence of India Rules, 1962, or under the Gold (Control) Ordinance, 1968, authorising the commencement or carrying on of business as a dealer, shall, if in force immediately before the commencement of this Act, continue to be in force until the expiry of the period of its validity or until the cancellation thereof, whichever is earlier.

(4) A person who holds, at the commencement of this Act, a valid licence authorising him to commence or to carry on business as a dealer shall, if he intends to continue such business after the expiry of the period of its validity, make, at least one month before the expiry of such period, an application (in such form and on payment of such fees, not exceeding one hundred rupees, as may be prescribed) for the renewal of such licence.

(5) A person who intends to commence, after the commencement of this Act, business as a dealer, shall make an application

(in such form and on payment of such fees, not exceeding one hundred rupees, as may be prescribed) for the issue of a licence.

(6) On receipt of an application for the issue or renewal of a licence under this section, the Administrator may, after making such inquiry, if any, as he may consider necessary, by order in writing, either issue or renew the licence, or reject the application for the same:

Provided that no licence shall be issued or renewed under this section unless the Administrator, having regard to the following matters, is satisfied that the licence should be issued or renewed, namely:—

- (a) the number of dealers existing in the region in which the applicant intends to carry on business as a dealer,
- (b) the anticipated demand, as estimated by him, for ornaments in that region,
- (c) the turnover of the applicant, if he had been carrying on business as a dealer prior to the commencement of Part XIIA of the Defence of India Rules, 1962, during the two years immediately preceding such commencement, or, in the case of an application for the renewal of a licence, the date of the application for such renewal,
- (d) the previous experience, if any, of the applicant with regard to the making, manufacturing, preparing, repairing or polishing of, or dealing in, ornaments, ,
- (e) the suitability of the applicant,
- (f) the suitability of the premises where the applicant intends to carry on business as a dealer,
- (g) the public interest, and
- (h) such other matters as may be prescribed.

(7) (a) The Administrator shall specify, in each licence granted to a dealer, the premises in which such dealer shall carry on business and no other person shall carry on business as a dealer in the said premises.

(b) A licensed dealer shall not carry on business as such dealer in any premises other than the premises specified in his licence.

(8) Every licensed dealer shall ensure that every artisan or other person employed by him complies, in the course of such employment, with the provisions of this Act or any rule or order made thereunder and of any other law relating to gold or foreign exchange for the time being in force.

Money-lending or other businesses not to be carried on in licensed premises.

What a dealer may manufacture.

Ornament, etc., to be stamped.

Acquisition of gold by a dealer.

**29.** No licensed dealer shall, unless authorised by the Administrator so to do,—

(a) carry on—

(i) business as a money-lender or banker, or

(ii) any business other than business as a dealer; or

(b) permit any other person to carry on money-lending, banking or any other business,

in the same premises in which he carries on business as such dealer.

**30.** Subject to the other provisions of this Act, a licensed dealer may make, manufacture, prepare, repair, polish or process ornaments and may also repair or polish articles but shall not, unless authorised by the Administrator so to do, make, manufacture or prepare any primary gold or article:

Provided that such dealer may, in the process of making, manufacturing, preparing or repairing ornaments, make, manufacture or prepare primary gold (other than standard gold bar) by melting, processing or converting any article, ornament or standard gold bar acquired, accepted or received by him in accordance with the provisions of Part XIIA of the Defence of India Rules, 1962, or, as the case may be, the Gold (Control) Ordinance, 1968 or of this Act.

6 of 1968.

**31.** (1) Every licensed dealer shall stamp every piece of article or ornament made, manufactured or prepared by him certifying the purity of the gold:

Provided that nothing in this section shall apply to any article or ornament on which, owing to its nature or the smallness of its size, it is not possible to put such a stamp.

(2) Every stamp referred to in sub-section (1) shall also contain such other particulars as may be prescribed.

**32.** Save as otherwise provided in this Act no licensed dealer shall buy or otherwise acquire or agree to buy or otherwise acquire or accept or otherwise receive or agree to accept or otherwise receive any article, ornament or primary gold from a person who is not a licensed dealer or refiner:

Provided that any such dealer may buy or otherwise acquire or accept or otherwise receive or agree to buy or otherwise acquire or accept or otherwise receive from a person who is not a licensed dealer or refiner,—

(i) any ornament which is not required to be included in a declaration or any ornament which, being required to be included in a declaration, has been so included, .

(ii) any article which, being required to be included in a declaration has been so included, or where such article is not

required to be included in a declaration, if the sale, delivery, transfer or disposal of such article has been authorised by the Administrator,

(iii) any primary gold, if the person selling, delivering, transferring, or otherwise disposing of the same has been authorised so to do by the Administrator:

Provided further that where any such dealer has delivered any article, ornament or primary gold to his artisan or a certified goldsmith, for the purpose of making, manufacturing, preparing, repairing or polishing any ornament, he may, after such ornament has been made, manufactured, prepared, repaired or polished, take back such ornament from the artisan or certified goldsmith, as the case may be.

**33.** Save as otherwise provided in this Act, no licensed dealer shall either own or have at any time in his possession, custody or control primary gold in any form except in the form of standard gold bars:

Possession of primary gold by a licensed dealer.

Provided that such dealer may, unless the Central Government (having regard to the needs of the trade, volume of business and public interest) otherwise directs, own or keep in his possession, custody or control not more than—

(a) four hundred grammes, if he does not employ any artisan,

(b) five hundred grammes, if he employs not more than ten artisans,

(c) one thousand grammes, if he employs more than ten but not more than twenty artisans,

(d) two thousand grammes, if he employs more than twenty artisans,

of primary gold in any form other than in the form of standard gold bars.

**34.** No licensed dealer shall keep in the premises where he carries on business as such dealer any primary gold, article or ornament which is not a part of his stock-in-trade or held by him in his capacity as a dealer and every primary gold, ornament or article found in such premises shall be deemed to be a part of the stock-in-trade of such dealer or held by him in his capacity as a dealer.

Gold which is not a part of the stock-in-trade, not to be kept in the business premises of a dealer.

Sale or delivery of gold by a licensed dealer or certified goldsmith.

35. (1) A licensed dealer may sell, deliver, transfer or otherwise dispose of or agree to sell, deliver, transfer or otherwise dispose of ornaments to any person.

(2) Save as otherwise provided in this Act, no licensed dealer shall—

(a) sell, deliver, transfer or otherwise dispose of or agree to sell, deliver, transfer or otherwise dispose of, or

(b) expose or offer for sale, delivery, transfer or disposal—

(i) primary gold to any person other than a licensed dealer or refiner or certified goldsmith,

(ii) any article to any person other than a licensed dealer or refiner:

Provided that a licensed dealer shall not sell or transfer primary gold to any other licensed dealer or to any certified goldsmith in any form except in the form of standard gold bars.

(3) Notwithstanding anything contained in sub-section (2), a licensed dealer may sell or deliver primary gold or article to any person in pursuance of an authorisation made by the Administrator or on production by that person of a permit granted by the Administrator in this behalf.

Section 35 not to apply to the transfer of gold to a certified goldsmith or to an artisan.

Acquisition, sale, etc., of gold to be subject to conditions.

Licensed dealers may take assistance of specialists.

36. Nothing contained in section 35 shall apply to the transfer or delivery, by a licensed dealer, of any primary gold or article to any certified goldsmith or artisan for the purpose of getting any ornaments made, manufactured, prepared, repaired or polished by such certified goldsmith or artisan.

37. Every acquisition, acceptance, sale, delivery, transfer or disposal of gold by a licensed dealer shall be made in accordance with such conditions, limitations and restrictions as may be prescribed in this behalf.

38. A licensed dealer may, in the course, and for the purpose, of manufacturing ornaments, send gold to any other dealer who possesses equipment for drawing wires or for die-casting or who is a specialist in stone-setting, engraving, enamelling, polishing or any other special process necessary for or ancillary to, the making, manufacturing, preparing, repairing or polishing of such ornament and that other dealer shall return such gold to the licensed dealer from whom he had received it after the completion of the process for which it was sent to him.

39. Except in the case of any quantity of gold acquired, accepted or received after the date of making of any return referred to in section 57, no licensed dealer shall, in his capacity as such dealer, either own or have in his possession, custody or control any gold which has not been included in such return:

Provided that any gold acquired, accepted or received after the date of making such return shall be included in the next succeeding return.

Prohibition regarding possession of gold not included in

## CHAPTER VIII

10

### CERTIFIED GOLDSMITHS

40. (1) Save as otherwise provided in this Act, no person shall commence, or carry on, business as a goldsmith after the commencement of this Act, unless he holds a valid certificate recognizing him as a goldsmith.

15 (2) The certificate referred to in sub-section (1)—

(a) shall be in such form as may be prescribed,

(b) shall be valid for such period as may be specified therein,

(c) may be renewed, from time to time, and

20 (d) may contain such conditions, limitations and restrictions as the Administrator may think fit to impose and different conditions, limitations and restrictions may be imposed for different classes of certified goldsmiths.

(3) Every certificate granted to a person under Part XIIA of the 25 Defence of India Rules, 1962, or under the Gold (Control) Ordinance, 1968, recognizing him as a goldsmith, shall, if in force immediately before the commencement of this Act, continue to be in force until the expiry of the period of its validity or until the cancellation thereof, whichever is earlier.

30 (4) Where any person has received any loan from the Government under any scheme for the rehabilitation of goldsmiths, he shall not be eligible for obtaining a certificate recognizing him as a goldsmith unless he has, within a period of seven months from the commencement of the Defence of India (Fourth Amendment) Rules, 1968, 35 or within such further period as the Administrator may on sufficient cause being shown, allow, repay such loan.

(5) Every application for the grant or renewal of a certificate referred to in sub-section (1) shall be made in such form, in such manner and on payment of such fee, not exceeding ten rupees, as may be prescribed.

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(6) On receipt of an application for the grant or renewal of certificate, the Administrator may, after making such inquiry, if any, as he may consider necessary, by order in writing, either grant or renew the certificate, or reject the application for the same:

Provided that no certificate shall be granted or renewed under this section unless the Administrator, having regard to the following matters, is satisfied that the certificate should be granted or renewed, namely:—

(a) the applicant had been carrying on business as a goldsmith for more than a year immediately before the commencement of Part XIIA of the Defence of India Rules, 1962, <sup>10</sup>

(b) the applicant is a member of the family of a person referred to in clause (a) and had been assisting such person in his work as a goldsmith for not less than one year immediately preceding the commencement of Part XIIA of the Defence of India <sup>15</sup> Rules, 1962, and has not received any educational assistance or technical training facilities from the Government under any scheme for the rehabilitation of goldsmiths,

(c) the applicant or his family, or both, had not received any assistance from Government or any Government sponsored <sup>20</sup> agency under any scheme for the rehabilitation of goldsmiths,

(d) the demand for ornaments, as estimated by the Administrator, in the region,

(e) the desirability of increasing the number of goldsmiths in the region,

(f) suitability of the applicant, having regard to his antecedents and competence, for the grant or renewal of a certificate, <sup>25</sup>

(g) the applicant belongs to a category or class to which, in the opinion of the Administrator, such certificate may be granted in the public interest, and <sup>30</sup>

(h) such other matters as may be prescribed.

(7) Every certified goldsmith shall have in his possession the certificate granted to him while he carries on business as such goldsmith and shall produce it for inspection on demand by any Gold Control Officer. <sup>35</sup>

41. A certified goldsmith may make, manufacture, prepare, repair, polish or process ornaments and may also repair or polish articles but shall not, unless authorised by the Administrator so to do, make, manufacture or prepare any primary gold or article:

Provided that, subject to the provisions of section 43, a certified goldsmith may, in the process of making, manufacturing, preparing or repairing ornaments, make, manufacture or prepare primary gold (other than standard gold bar) by melting, processing or converting 5 any article, ornament or standard gold bar acquired, accepted or received by him in accordance with the provisions of Part XIIA of the Defence of India Rules, 1962, or, as the case may be, the Gold (Control) Ordinance, 1968, or of this Act.

6 of 1968.

42. A certified goldsmith—

Restrictions on acquisition or sale of gold by a certified

10 (a) may—

(i) buy standard gold bars from a licensed dealer or refiner,

15 (ii) accept or otherwise receive any article, ornament gold- or primary gold from a licensed dealer for the purpose of smith making, manufacturing, preparing, or repairing ornaments for such licensed dealer,

20 (iii) accept or otherwise receive, subject to the provisions of section 9, from any other person any article or ornament for the purpose of making, manufacturing or preparing ornament for such person or for the purpose of repairing or polishing such article or ornament;

(b) shall not, save as otherwise provided in this Act, buy or agree to buy or sell or agree to sell any primary gold, article or ornament.

25 43. No certified goldsmith shall either own or have at any time Limit on in his possession, custody or control any quantity of— primary gold

(i) standard gold bars in excess of one hundred grammes, which a certified goldsmith may possess.

30 (ii) any quantity of primary gold (including standard gold bars) in excess of two hundred grammes.

44. The provisions of section 38 shall apply so far as may be to a certified goldsmith as they apply to a licensed dealer subject to the to apply to modification that every reference therein to a licensed dealer shall be construed as a reference to a certified goldsmith. Section 38 certified goldsmiths.

## CHAPTER IX

## ARTISANS

## Artisans.

45. (1) A licensed dealer may employ, whether on a whole-time or part-time basis or on payment of daily wages or other remuneration, an artisan—

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(a) who was a dealer or a goldsmith or was employed by a dealer for a period of not less than one year immediately preceding the commencement of Part XIIA of the Defence of India Rules, 1962, or at any time thereafter but before the commencement of the Gold (Control) Ordinance, 1968, or

10 of 1968.

(b) who is eligible to obtain a certificate recognizing him as a goldsmith.

(2) No person shall be employed by any licensed dealer as an artisan unless an identity card has been given to such artisan by the licensed dealer and no artisan, the countersignature of whose identity card has been refused or whose identity card has been cancelled, shall be employed by a licensed dealer after such refusal or cancellation.

(3) Before employing an artisan, a licensed dealer shall make inquiries as to the antecedents of the artisan and grant him an identity card, in such form and containing such particulars as may be prescribed, and enter the name and the prescribed particulars of such artisan in a register to be maintained in such form as may be prescribed and shall send such identity card within one month from the date of issue thereof to the Gold Control Officer for approval and countersignature.

(4) On receipt of the identity card of an artisan under this Act the Gold Control Officer may, after making such inquiry, if any, as he may consider necessary, either countersign the identity card or if he is of opinion that the applicant is not a suitable person for employment as an artisan, refuse in writing to countersign such identity card.

(5) The Gold Control Officer may, if he is satisfied that the particulars of an artisan, as entered in the register referred to in subsection (3), are incorrect or false in material particulars or that the artisan has contravened any provision of this Act or any rule or order made thereunder or of any other law relating to gold or foreign exchange for the time being in force, cancel the identity card of such artisan:

Provided that no such cancellation shall be made unless the artisan has been given a reasonable opportunity of showing cause against the proposed action.

(6) The identity card—

5 (a) of an artisan, who is dismissed by the dealer by whom he is employed, or  
 (b) the countersignature of which has been refused, or  
 (c) which has been cancelled,

shall be immediately recovered by the licensed dealer by whom the 10 artisan holding such card is employed and such dealer shall immediately recover all the quantity of gold which was in the possession, custody or control of such artisan on the date of such dismissal, refusal or cancellation, as the case may be.

(7) No licensed dealer or certified goldsmith shall accept employment as an artisan unless he has, before commencing work as 15 an artisan, surrendered his licence or certificate, as the case may be, to the Gold Control Officer.

46. Subject to the other provisions of this Act, an artisan may Functions of an artisan.  
 make, manufacture, prepare, repair or polish ornaments, and may 20 also repair or polish an article, for the dealer by whom he is employed, but shall not, unless the dealer by whom he is employed is authorised by the Administrator, so to do, make, manufacture or prepare any primary gold or article:

Provided that such artisan may, in the process of making, 25 manufacturing, preparing or repairing ornaments, make, manufacture or prepare primary gold (other than standard gold bar) by melting, processing or converting any article or ornament or standard gold bar received by him from the licensed dealer by whom he is employed.

30 47. The total quantity of primary gold in the possession, custody or control, whether individually or collectively, of the artisans employed by a licensed dealer shall not, at any time exceed the limits Limits on primary gold which an artisan may have in his possession.  
 specified in section 33.

48. (1) An artisan may accept article, ornament or primary gold from the licensed dealer by whom he is employed for the purpose of 35 making, manufacturing, preparing, repairing or polishing ornaments for such dealer. Restrictions on the acquisition, possession or disposal of gold by an artisan.

(2) No artisan shall, save as otherwise provided in this Act,—

- (i) buy or otherwise acquire or agree to buy or otherwise acquire, or
- (ii) accept or otherwise receive or agree to accept or otherwise receive, or
- (iii) sell, deliver, transfer or otherwise dispose of or agree to sell, deliver, transfer or otherwise dispose of, any article, ornament or primary gold.

**Artisan not to work at any place other than the premises of the dealer.** 49. An artisan shall not work as such at any place other than the premises specified in the licence issued to the dealer by whom he is employed.

**Artisans to carry identity cards with them.** 50. Every artisan shall have in his possession the identity card granted to him while he carries on work as such artisan and shall produce it for inspection on demand by any Gold Control Officer.

## CHAPTER X

15

### CANCELLATION AND SUSPENSION OF LICENCES AND CERTIFICATES

**Cancellation or suspension of licence or certificate.** 51. (1) The Administrator may, if he has any reasonable cause to believe that the holder of any licence or certificate issued, renewed or continued under this Act has made any statement in, or in relation to, any application for the issue or renewal of a licence or certificate under this Act which is incorrect or false in material particulars or has contravened any provisions of Part XIIA of the Defence of India Rules, 1962, the Gold (Control) Ordinance, 1968, or of this Act or any rule or order made thereunder or of any other law for the time being in force which prohibits, restricts or regulates the bringing into or taking out of India of any goods [including coins, currency (whether Indian or foreign) and foreign exchange] or the carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing such goods or the making of any payment in relation to such goods,—

6 of 1968.

30

(i) suspend such licence or certificate, as the case may be, pending the completion of any inquiry or trial against the holder of such licence or certificate, as the case may be, for such contravention, or

(ii) cancel such licence or certificate, as the case may be: 35

Provided that no such licence or certificate shall be suspended for a period exceeding ten days or cancelled unless the holder thereof has been given a reasonable opportunity of showing cause against the proposed action.

5 (2) Every person whose licence or certificate has been suspended shall, immediately after such suspension, stop functioning as such licensee or holder of such certificate and shall not resume business as such licensee or holder of such certificate until the order of such suspension has been vacated.

10 (3) Every person who holds a licence or certificate which is suspended or cancelled shall, immediately after such suspension or cancellation, surrender such licence or certificate, as the case may be, to the authority by which such licence or certificate was issued.

52. A licensed dealer or refiner or a certified goldsmith who discontinues, or intends to discontinue, business as such dealer or refiner or certified goldsmith, may make an application to the Administrator for the cancellation of his licence or certificate, as the case may be, and thereupon the Administrator may cancel the licence or certificate which was issued or renewed to such dealer or refiner or certified goldsmith.

20

53. Where any firm has been licensed under this Act to carry on business as a dealer or refiner, such licence shall, notwithstanding anything contained in this Act, become invalid on and from the date on which there is a change in the partnership of such firm, unless such change in the partnership has been approved by the Administrator.

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54. Where the period of validity of any licence issued to a dealer or refiner or a certificate granted to a certified goldsmith has expired or where any application for the renewal of such licence or certificate, as the case may be, has been rejected, or where such licence or certificate has been cancelled, such dealer, refiner or certified goldsmith, as the case may be, shall, within thirty days from the date of such expiry, rejection or cancellation,—

30 (i) sell or otherwise transfer to any other licensed dealer or refiner the entire quantity of gold (other than ornaments) in his possession, custody or control on the date of such expiry, rejection or cancellation, as the case may be, and send intimation thereof to the Administrator; and

(ii) either sell or otherwise transfer or take over as personal property any ornament which is in his possession, custody or control on the said date.

**Display of licences.** 55. Every licensed dealer and every licensed refiner shall display his licence at a conspicuous place of the premises in which he carries on business as a licensed dealer or refiner.

## CHAPTER XI

### ACCOUNTS AND RETURNS

**Accounts.** 56. (1) Every licensed dealer, every licensed refiner and every certified goldsmith shall keep, in such form and in such manner as to may be prescribed, a true and complete account of the gold owned, possessed, held, controlled, bought or otherwise acquired, or accepted or otherwise received, or sold, delivered, transferred or otherwise disposed of, by him in his capacity as such licensed dealer or refiner or certified goldsmith, as the case may be, and different forms of accounts 15 may be prescribed for different classes of licensed dealers, refiners or certified goldsmiths. •

(2) Every licensed dealer, every licensed refiner and every certified goldsmith shall as and when he buys or otherwise acquires or accepts or otherwise receives, or sells, delivers, transfers or otherwise disposes of, any gold, enter in the accounts referred to in sub-section (1) the prescribed particulars of such gold and the prescribed particulars of the person from whom such gold was bought, acquired, accepted or otherwise received or to whom such gold was sold, delivered, transferred or otherwise disposed of. 25

(3) No licensed dealer or refiner and no certified goldsmith shall, in his capacity as licensed dealer or refiner, either own or have in his possession, custody or control any gold which has not been included in the accounts referred to in sub-section (1).

**Returns as to gold.** 57. (1) Every licensed dealer, every licensed refiner and every certified goldsmith shall furnish to the Administrator such returns as to the quantity, description and other prescribed particulars of gold owned, possessed, held or controlled by him, in such form and within such time as may be prescribed and different returns may be prescribed for different classes of licensed dealers or refiners or certified goldsmiths. 35

(2) Every return shall be made in triplicate, of which one copy shall be authenticated and signed by the Gold Control Officer and

thereafter shall be returned to the dealer or, as the case may be, the refiner and the copy so returned shall be retained by the dealer or refiner as the evidence of the return made by him under this section.

58. (1) Every licensed dealer, and every licensed refiner and every certified goldsmith shall, if so required by the Gold Control Officer,—

Production and  
inspection of  
accounts.

(a) produce before him any accounts, register or other documents, and

(b) furnish to the Gold Control Officer any information relating to any gold owned by him or in his possession, custody or control or to the acceptance, receipt, acquisition, sale, delivery, transfer or other disposal of any gold by him.

(2) Every account, register and other document relating to any gold or to the acceptance, acquisition, receipt, delivery, transfer or other disposal thereof and any gold owned by or in the possession, custody or control of any licensed dealer or refiner or certified goldsmith, wherever kept, shall be liable to be inspected by any Gold Control Officer and such officer may, for the purposes of such inspection, enter, at any reasonable time, the business premises of a licensed dealer or refiner or certified goldsmith.

## CHAPTER XII

### ENTRY, SEARCH, SEIZURE AND ARREST

59. (1) Any Gold Control Officer authorised in this behalf by the Administrator may, if he has any reason to suspect that any provision of this Act has been, or is being, or is about to be, contravened, enter and search, at any reasonable time, any refinery or the business premises of a licensed dealer or a certified goldsmith.

Power to  
enter  
and  
search.

(2) Any Gold Control Officer, not below the rank of a Superintendent of Central Excise, empowered in this behalf by the Central Government, may, if he has any reason to suspect that any provision of this Act has been, or is being, or is about to be, contravened, authorise any officer of Government to enter and to search any premises, vaults, lockers, or any other place, whether above or below ground, or may himself do so.

60. Any Gold Control Officer authorised in this behalf by the Administrator may, if he has any reason to suspect that any person has secreted about his person or in any other thing,—

Power  
to  
search  
person.

(a) any gold in respect of which he suspects that any provision of this Act has been, or is being, or is about to be, contravened;

(b) any document which, in his opinion, will be useful for, or relevant to, any inquiry or proceeding in relation to the contravention of any provision of this Act or of any rule or order made thereunder,

detain and search such person or thing provided that the period of detention, if any, under this section shall not exceed twenty-four hours.

**Conditions under which a search shall be conducted.**

61. (1) When any such officer referred to in section 60 is about to search the person referred to in that section, he shall, if such person so requires, take such person without any unnecessary delay, to the nearest Gold Control Officer of gazetted rank (hereafter in this section referred to as the gazetted officer) or to the nearest magistrate.

(2) If such requisition is made, the Gold Control Officer may detain the person making it until he can bring him before the gazetted officer or magistrate referred to in sub-section (1).

(3) The gazetted officer or magistrate before whom any person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.

(4) No female shall be searched by any one excepting a female.

**Power to search vehicle, etc.**

62. Any Gold Control Officer authorised in this behalf by the Administrator may, if he has any reason to suspect that any conveyance or animal is being, or is about to be, used for the transport of any gold in respect of which he suspects that any provision of this Act has been, or is being, or is about to be, contravened, at any time stop such conveyance or animal, or, in the case of an aircraft, compel it to land, and

(a) rummage and search the conveyance or part thereof;

(b) examine and search any goods in the conveyance or on the animal;

(c) if it becomes necessary to stop any conveyance or animal, he may use all lawful means for stopping it, and where such means fail, the conveyance or animal may be fired upon.

*Explanation.*—Any reference to a conveyance in this Chapter and in Chapters XIII, XIV and XV shall, unless the context otherwise requires, be construed as including a reference to any aircraft, vehicle or vessel.

63. Every person making a search under this Act shall have the power to break open the lock of any door, almirah, safe, box, cupboard, drawer, package or any other thing, if the key thereof is withheld.

Power to search to include power to break open locks, etc.

64. (1) Any Gold Control Officer of a gazetted rank shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce any document or other thing in any inquiry which such officer is making in connection with any contravention of any provision of this Act.

(2) A summons to produce documents or other things may be for the production of certain specified documents or things or for the production of all documents or things of a certain description, in the possession, custody or control of the person summoned.

(3) All persons so summoned shall be bound to attend in person and to state the truth upon any subject respecting which they are summoned and produce such documents and other things as may be required:

Provided that where any person has been summoned merely to produce a document or other thing, he shall be deemed to have complied with the summons if he causes such document or other thing to be produced instead of attending personally to produce the same:

Provided further that the exemption under section 132 of the 5 of 1908. Code of Civil Procedure, 1908, shall be applicable to any requisition for attendance under this section.

(4) Every such inquiry as aforesaid shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of 45 of 1860. the Indian Penal Code.

65. Any Gold Control Officer may, during the course of any inquiry in connection with the contravention of any provision of this Act,—

Power to call for information, etc.

(a) call for information from any person for the purpose of satisfying himself whether there has been any contravention of the provisions of this Act or any rule or order made thereunder;

(b) require any person to produce or deliver any document or thing useful for, or relevant to, the inquiry;

(c) examine any person acquainted with the facts and circumstances of the case.

Power  
to  
impound  
or retain  
docu-  
ments.

66. Any document or other thing which is produced before any Gold Control Officer, in pursuance of the provisions of section 64 or section 65, may be impounded or retained in his custody by such officer for such period as he may consider necessary:

Provided that no document or other thing shall be—

(a) impounded without recording reasons for so doing, or

(b) retained in the custody of such officer for a period exceeding fifteen days (exclusive of holidays) unless he has obtained the approval of an officer (not below the rank of an Assistant Collector of Central Excise or of Customs), who is superior to him in rank, for so doing.

Power  
to seize

67. (1) If any Gold Control Officer has reason to believe that in respect of any gold any provision of this Act has been, or is being, or is about to be, contravened, then, he may seize—

(a) such gold along with the package, covering or receptacle, if any (and the contents thereof), in which the gold is found;

(b) any other goods in which any quantity of such gold has been mixed.

(2) Any Gold Control Officer may seize—

(a) any document or other thing which, in his opinion, will be useful for, or relevant to, any inquiry or proceeding for the contravention of any provision of this Act or any rule or order made thereunder;

(b) any conveyance or animal which has been, or is being, or is about to be, used for the transport of any gold in relation to which any provision of this Act or any rule or order made thereunder has been, or is being, or is about to be, contravened.

(3) Any document or other thing seized under sub-section (2) shall not be retained by the Gold Control Officer for a period exceeding six months from the date of the seizure unless the reasons for retaining the same are recorded by him in writing and the approval of the Administrator for such retention is obtained:

Provided that the Administrator shall not authorise the retention of the document or other thing for a period exceeding thirty days after all proceedings, for which the document or other thing is useful or relevant, are completed.

(4) The person from whose custody any document or other thing is seized under sub-section (2) may make copies thereof or take extracts therefrom in the presence of the Gold Control Officer or any other person empowered by him in this behalf, at such place and at such time as the Gold Control Officer may appoint in this behalf.

(5) If a person legally entitled to the document or other thing seized under sub-section (2) objects for any reason to the approval being given by the Administrator under sub-section (3), he may make an application to the Central Government stating therein the reasons for such objection and requesting for the return of the document or other thing.

(6) On receipt of the application under sub-section (5), the Central Government may, after giving the applicant an opportunity of being heard, pass such orders as it may think fit.

68. Where any document is produced by any person under this Act or has been seized thereunder from the custody or control of any person and such document is tendered by the prosecution in evidence against him, the court shall, notwithstanding anything to the contrary contained in any other law for the time being in force,—

Presumption  
as to  
documents in  
certain  
cases.

(a) presume, unless the contrary is proved,—

(i) the truth of the contents of such document,

(ii) that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the court may reasonably assume to have been signed by or to be in the handwriting of, any particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;

(b) admit the document in evidence, notwithstanding that it is not duly stamped if such document is otherwise admissible in evidence.

Power  
to  
arrest.

69. (1) Any Gold Control Officer authorised by the Administrator in this behalf may, if he has reasons to believe that any person has contravened, or is contravening, or is about to contravene any provision of this Act, arrest such person and shall as soon as possible inform him of the grounds for such arrest and shall take such arrested person to the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

(2) Any officer who has arrested any person under this section shall, for the purpose of releasing such person on bail or otherwise, have the same powers and be subject to the same provisions as the officer-in-charge of a police station has, and is subject to, under the Code of Criminal Procedure, 1898.

5 of 1898.

5 of 1898.

Provi-  
sions of  
sections  
102 and  
103 of  
the Code  
of Crimi-  
nal Proce-  
dure to  
apply to  
search and  
seizure.

70. The provisions of sections 102 and 103 of the Code of Criminal Procedure, 1898, relating to search and seizure shall, so far as they are applicable, apply in relation to every search made under this Act and to every seizure made in the course of such search.

Power  
to record  
state-  
ments.

71. Where at the time of arrest or seizure under this Act, on the detection of any contravention of any provision of this Act or any rule or order made thereunder, any person makes a statement to the officer making such arrest, seizure or detection, that officer shall record in writing the statement of such person in as nearly as possible the language in which such statement is made and shall on demand by such person furnish him with a copy of the statement.

## CHAPTER XIII

### CONFISCATION AND PENALTIES

Confi-  
cation of  
gold.

72. (1) Any gold in respect of which any provision of this Act or any rule or order made thereunder has been, or is being, or is about to be, contravened, shall be liable to confiscation.

(2) Any package, covering or receptacle (including its other contents) in which any gold liable to confiscation under sub-section (1) is found shall also be liable to confiscation.

(3) Where any gold liable to confiscation under sub-section (1) is mixed with other goods in such manner that such gold cannot be separated from those other goods, the whole of such goods shall be liable to confiscation.

(4) Any gold which is liable to confiscation under sub-section (1), shall be so liable notwithstanding any change in its form.

73. Any conveyance or animal which has been, or is being, or is about to be, used for the transport of gold in relation to which any provision of this Act or any rule or order made thereunder has been, or is being, or is about to be, contravened, shall be liable to confiscation unless the owner of the conveyance or animal proves that it was so used or about to be used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance or animal and that each of them had taken all reasonable precautions against such use:

Provided that where any such conveyance or animal is used for the transport of goods or passengers for hire, the owner of the conveyance or animal shall, be given an option to pay in lieu of confiscation of the conveyance or animal, a fine not exceeding three times the value of the gold in relation to which the provision of this Act or any rule or order made thereunder has been, or is being, or is about to be, contravened.

74. Whenever any confiscation is authorised by this Act, the officer adjudging it may, subject to such conditions as may be specified in the order adjudging the confiscation, give to the owner thereof an option to pay in lieu of confiscation such fine, not exceeding five times the value of the thing in respect of which confiscation is authorised, as the said officer thinks fit.

Power to give option to pay fine in lieu of confiscation.

75. Any person who, in relation to any gold does or omits to do any act which act or omission would render such gold liable to confiscation under this Act, or abets the doing or omission of such an act, or is in charge of the conveyance or animal which is liable to confiscation under this Act, shall be liable to a penalty not exceeding five times the value of the gold or one thousand rupees, whichever is more, whether or not such gold has been confiscated or is available for confiscation.

Liability

Penal-  
ties for  
contra-  
vention,  
etc., not  
express-  
ly men-  
tioned.

Reference  
to gold  
to be  
construed  
as refe-  
rence to  
gold of  
any purity.

Confisca-  
tion or  
penalty  
not to  
interfere  
with  
other  
punish-  
ments.

Adjudica-  
tion.

Giving  
of an  
opportu-  
nity  
to the  
owner of  
gold, etc.

76. Any person who contravenes any provision of this Act or any rule or order made thereunder or abets any such contravention or who fails to comply with any provision of this Act, or any rule or order made thereunder shall, where no express penalty is elsewhere provided for such contravention or failure, be liable to such penalty, not exceeding one thousand rupees, for every such contravention, failure or abetment, as the case may be.

77. Any reference to gold in this Chapter and in Chapters XII, XIV, XV and XVI shall, unless the context otherwise requires, be construed as including a reference to any article or thing made of, or containing, gold of any purity, whether such purity exceeds nine carats or not.

78. No confiscation made or penalty imposed under this Act shall prevent the infliction of any other punishment to which the person affected thereby is liable under the provisions of this Act or under any other law.

## CHAPTER XIV

### ADJUDICATION, APPEAL AND REVISION

79. Any confiscation may be adjudged or penalty may be imposed under this Act—

(a) without limit, by a Gold Control Officer not below the rank of a Collector of Central Excise or of Customs;

(b) subject to such limits as may be specified in this behalf, by such other Gold Control Officer, not below the rank of a Superintendent of Central Excise, as the Central Government may, by notification, authorise in this behalf.

80. No order of adjudication of confiscation or penalty shall be made unless the owner of the gold, conveyance, or animal or other person concerned is given a notice in writing—

(i) informing him of the grounds on which it is proposed to confiscate such gold, conveyance or animal or to impose a penalty; and

5 (ii) giving him a reasonable opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the confiscation or imposition of penalty mentioned therein and, if he so desires, of being heard in the matter:

Provided that the notice and the representation referred to in this section may, at the request of the owner or other person concerned be oral:

10 Provided further that where no such notice is given within a period of six months from the date of the seizure of the gold, conveyance or animal or such further period as the Collector of Central Excise or of Customs may allow, such gold, conveyance or animal shall be returned after the expiry of that period to the person from whose possession it was seized.

15 Explanation.—Where any fresh adjudication is ordered under this Act, the period of six months specified in the second proviso shall be computed from the date on which such order for fresh adjudication is made.

20 31. (1) Any person aggrieved by any decision or order made under this Act, may prefer an appeal,—

(a) where the decision or order has been made by a Collector of Central Excise or of Customs, as the case may be, to the Administrator;

25 (b) where the decision or order has been made by any officer below the rank of a Collector of Central Excise or of Customs, as the case may be,—

(i) to the Collector of Central Excise or of Customs, as the case may be, to whom the officer who made such decision or order is subordinate, or

30 (ii) if the Central Government so directs, to the Appellate Collector of Customs,

within a period of three months from the date of communication to such person of the decision or order:

35 Provided that the appellate authority may, if it is satisfied that the appellant was prevented by sufficient cause from preferring an appeal within the aforesaid period of three months, allow such appeal to be preferred within a further period of three months.

40 (2) The appellate authority may, after giving to the appellant an opportunity of being heard, if he so desires, and after making such further inquiries, if any, as it may consider necessary, pass such order as it thinks fit, confirming, modifying or reversing the decision or order appealed against, or may send back the case, with such

directions, as it may think fit, for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary:

Provided that an order enhancing any penalty or fine in lieu of confiscation or confiscating goods of greater value shall not be made under this section unless the appellant has had an opportunity of making a representation and, if he so desires, of being heard in his defence. 5

Power of revision of the Administrator.

82. The Administrator may, of his own motion or otherwise, call for and examine the record of any proceeding in which any order of adjudication of confiscation or penalty, or any other decision or order has been made by any Gold Control Officer and against which no appeal has been preferred, for the purpose of satisfying himself as to the correctness, legality or propriety of such order or decision and may pass such orders thereon as he may think fit: 10

Provided that no decision or order shall be varied under this section so as to prejudicially affect any person unless such person— 15

- (a) has within a period of two years from the date of such decision or order received a notice to show cause why such decision or order shall not be varied, and
- (b) has been given a reasonable opportunity of making a representation and, if he so desires, of being heard, in his defence. 20

Power of revision of the Central Government.

83. (1) The Central Government may, on the application of any person aggrieved by any decision given or order made under this Act from which no appeal lies, pass such orders as it may think fit if such application has been made within six months from the date of the decision or order or within such further time as the Central Government may allow. 25

(2) The Central Government may, on its own motion or otherwise, call for and examine the record of any proceeding in which any decision or order has been made on appeal for the purpose of satisfying itself as to the correctness, legality or propriety of such decision or order and may pass such order thereon as it may think fit. 30

(3) No decision or order shall be varied under this section so as to prejudicially affect any person unless such person— 35

- (a) has, within a period of one year from the date of such decision or order, received a notice to show cause why such decision or order shall not be varied, and

(b) has been given a reasonable opportunity of making a representation and, if he so desires, of being heard, in his defence.

**84.** (1) Every person or authority making any adjudication or hearing any appeal or exercising any powers of revision under this Act shall have all the powers of a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of witnesses;
- 10 (b) requiring the discovery and production of any document;
- (c) requisitioning any public record or copy thereof from any court or office;
- (d) receiving evidence on affidavits; and
- 15 (e) issuing commissions for the examination of witnesses or documents.

(2) Every person or authority making any adjudication or hearing any appeal or exercising any powers under this Act shall be deemed to be a civil court for the purposes of sections 480 and 482 of

**8 of 1898.** 20 the Code of Criminal Procedure, 1898.

(3) Every person or authority making any adjudication or hearing any appeal or exercising any powers of revision under this Act shall have power to make such orders of an interim nature as it may think fit and may also, for sufficient cause, order the stay of operation of 25 any decision or order.

**85.** Notwithstanding anything contained in any other law—

- (a) any order passed by the Administrator or the Central Government in revision,
- 30 (b) subject to such order of the Government or the Administrator, any order passed on appeal, and
- (c) subject to the final order of the Central Government or of the Administrator in revision and the order on appeal, any order of adjudication of confiscation, fine or penalty, or any other decision given or order made under this Act,

35 shall be final and shall not be called in question in any court.

## CHAPTER XV

### OFFENCES AND THEIR TRIAL

**86.** Whoever, in contravention of the provisions of this Act or any rule or order made thereunder,—

- 40 (i) makes, manufactures, prepares or processes any primary gold, or

Power of  
the adjudicating  
officer.

Finality of  
orders.

Punish-  
ment for  
illegal  
possession,  
etc., of  
gold.

(ii) owns or has in his possession, custody or control any primary gold, or

(iii) buys or otherwise acquires, or accepts or otherwise receives, or agrees to buy or otherwise acquire or to accept or otherwise receive, any primary gold, or

(iv) sells, delivers, transfers or otherwise disposes of, or agrees to sell, deliver, transfer or otherwise dispose of, or exposes or offers for sale, delivery, transfer or disposal, any primary gold, or

(v) melts, assays, refines, extracts, alloys, or converts any gold or subjects it to any other process, or

(vi) makes, manufactures, prepares, repairs, polishes or processes, or places any order for the making, manufacturing, preparing, repairing, polishing or processing of, any article or ornament, or

(vii) buys or otherwise acquires, or accepts or otherwise receives, or agrees to buy or otherwise acquire or to accept or otherwise receive, or sells, delivers, transfers or otherwise disposes of, or agrees to sell, deliver, transfer or otherwise dispose of, or exposes or offers for sale, delivery, transfer or other disposal, any article or ornament, or

(viii) owns or has in his possession, custody or control any article or ornament, or

(ix) carries on any business or transaction in gold for which a licence or certificate is required to be obtained by or under this Act, or

(x) carries on business as a banker or money-lender,

shall, without prejudice to any other action that may be taken under this Act, be punished with imprisonment for a term which shall not be less than six months but not more than three years and also with fine:

Provided that the court may, if it is satisfied that the special circumstances of the case so require, impose a sentence of imprisonment for a term which may be less than six months.

**Failure to make a declaration.** 87. Whoever fails or omits to make a declaration [including a declaration referred to in sub-section (12) of section 17] without any reasonable cause or makes a declaration which is either false or which he knows or has reason to believe to be incorrect, shall, without prejudice to any other action that may be taken under this Act, be punished with imprisonment for a term which may extend to two years and also with fine.

88. Whoever omits without any reasonable cause to maintain accounts or to submit any return in accordance with the provisions of this Act or any rule or order made thereunder or who keeps any accounts or makes any statement in any return which is false or which he knows or has reason to believe to be incorrect, shall, without prejudice to any other action that may be taken under this Act be punished with imprisonment for a term which may extend to two years and also with fine, and in the event of a second or subsequent offence, with imprisonment for a term which shall not be less than six months but not more than three years and also with fine.

89. (1) A dealer or refiner who knows or has reason to believe that any provision of this Act or any rule or order made thereunder has been, or is being, contravened, by any person employed by him in the course of such employment, shall be deemed to have abetted an offence against this Act.

(2) Whoever abets, or is deemed under sub-section (1) to have abetted, an offence against this Act, shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

90. Whoever,—

- (i) counterfeits any stamp intending that the same shall be used for stamping any standard gold bar, article or ornament, or uses any counterfeit stamp knowing it to be counterfeit, or
- (ii) falsely stamps any primary gold, article or ornament with the intention of causing it to be believed that such primary gold, article or ornament is of such purity as is mentioned in such stamp, or
- (iii) sells, delivers, transfers or otherwise disposes of, or agrees to sell, deliver, transfer or otherwise dispose of, or exposes or offers for sale, delivery, transfer, or disposal, falsely stamped primary gold, article or ornament knowing or having reason to believe it to be so, or

(iv) unlawfully has in his possession, custody or control any implement, instrument, apparatus, appliance, machinery or other equipment or any chemical, mould, stamp or any other material which he either knows or has reason to believe to be intended for refining or assaying any primary gold or for counterfeiting any mark on any standard gold bar, article or ornament,

shall be punished with imprisonment for a term which shall not be less than six months but not more than three years and shall also be liable to fine:

Dealers,  
etc., when  
to be  
deemed  
to have  
abetted an  
offence.

Failure to  
submit  
returns  
or to  
maintain  
accounts,

Punish-  
ment for  
the use  
of counter-  
feit stamp,  
etc.

Provided that the court may, if it is satisfied that the special circumstances of the case so require, impose a sentence of imprisonment for a term which may be less than six months.

Punishment for allowing premises to be used as refinery.

Punishment for offences for which no punishment is provided.

Power of court to order for-forfeiture.

Offences by companies.

91. Whoever knowingly allows any person to use any premises or any part thereof as a refinery in contravention of the provisions of section 105 shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both. 5

92. Whoever contravenes any provisions of this Act or any rule or order made thereunder for which no punishment is separately provided in this Chapter, shall be punished with imprisonment for a term <sup>10</sup> which may extend to three months, or with fine, or with both.

93. A court trying an offence against this Act may order the forfeiture of any implement, instrument, apparatus, appliance, machinery or other material which the court is satisfied has been used in or in connection with the making or manufacturing of any standard <sup>15</sup> gold bar, primary gold, article or ornament in contravention of the provisions of this Act or of any rule or order made thereunder.

94. (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: 20

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the <sup>25</sup> offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent <sup>30</sup> or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. 35

*Explanation.—*For the purposes of this section,—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm. 40

95. Any officer exercising powers under this Act or any rule or order made thereunder, who knows that there are no reasonable grounds for suspicion for so doing, and yet—

5 (a) searches or causes to be searched any house, conveyance or place,

(b) searches or arrests any person, or

(c) seizes any movable property,

shall, for every such offence, be punished with fine which may extend to two thousand rupees.

10 96. (1) Any Gold Control Officer who ceases or refuses to perform or withdraws himself from the duties of his office shall, unless he has obtained the express written permission of the Collector of Central Excise or of Customs, as the case may be, or has other lawful excuse for so doing, be punished with imprisonment for a term which 15 may extend to one year, or with fine, or with both.

(2) Any Gold Control Officer who wilfully aids in or connives at the contravention of any provision of this Act or of any rule or order made thereunder shall, for every such offence, be punished with imprisonment for a term which may extend to three years, or 20 with fine, or with both.

97. Any person who wilfully or maliciously gives any false information which leads to any arrest, search or seizure under this Act shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both.

Wrongful search, seizure, etc., by Gold Control Officer.

Failure of Gold Control Officer in duty or his connivance at the contravention of the provisions of this Act.

Punishment for giving false information.

25 98. (1) Save as otherwise provided in sub-section (2), no court shall take cognizance of any offence against this Act except on a complaint in writing made by a Gold Control Officer, not below the rank of a Collector of Central Excise or of Customs, having jurisdiction over the area in which the offence is committed or 30 any person authorised by him in writing in this behalf.

(2) No court shall take cognizance of any offence against this Act committed by a Gold Control Officer, except on a complaint in writing made with the previous sanction of the Central Government.

Cognizance of offences.

Offences  
to be  
tried  
summarily.

99. Notwithstanding anything contained in the Code of Criminal Procedure, 1898,—

5 of 1898.

(i) no magistrate, other than a presidency magistrate or a magistrate of the first class shall try an offence against this Act,

5

(ii) every offence against this Act may be tried summarily by a magistrate.

## CHAPTER XVI

### MISCELLANEOUS

Presump-  
tion as  
to owner-  
ship of  
gold.

100. Any person who is in possession, custody or control of any <sup>10</sup> primary gold, article or ornament shall be presumed, unless the contrary is proved, to be the owner thereof.

Precau-  
tions to  
be taken  
by licens-  
ed refiner,  
dealer or  
certified  
goldsmith,  
before  
acquiring  
any gold.

101. Every licensed dealer or refiner or certified goldsmith shall, before accepting, buying or otherwise acquiring any gold from any person, take all reasonable steps to satisfy himself as to the identity <sup>15</sup> of the person from whom such gold is being bought, or otherwise acquired or accepted or otherwise received and as to the right of such person to sell, deliver, transfer or dispose of such gold, and if, after an inquiry made by an officer authorised in this behalf by the Administrator, it is found that the person from whom such gold <sup>20</sup> is purported to have been bought, acquired, accepted or received is either a fictitious person or a person who is not readily traceable, it shall be presumed, unless the contrary is proved by such dealer or refiner or certified goldsmith, as the case may be, that such gold was bought, acquired, accepted or received in contravention of the <sup>25</sup> provisions of this Act or any rule or order made thereunder.

Power to  
take  
samples.

102. (1) A Gold Control Officer authorised in this behalf may—

(a) take samples of gold from any dealer, refiner or other person;

(b) send such samples for assay or analysis to such authority <sup>30</sup> as may be prescribed and require such authority to send to him a report as to the result of the assay or analysis.

(2) Where any sample has been taken under sub-section (1),—

(a) such sample shall be restored to the person from whom it was taken after the purpose for which it was taken has been <sup>35</sup> carried out but if such person fails to take delivery of the sample within three months from the date on which it was proposed to be returned to him, it may be disposed of in such manner as the Administrator may direct;

(b) no compensation shall be payable for any reduction in the weight of such sample by reason of any test, assay or analysis.

103. The Central Government may, by notification, direct that all or any of the powers which may be exercised by it under this Act, except those conferred by section 115, shall, in such circumstances and under such conditions, if any, as may be specified in the notification, be exercised also by such person or authority as may be specified therein. Power to delegate.

104. (1) Where the business of a licensed dealer or refiner is transmitted by succession, intestate or testamentary, the heir or legatee, as the case may be, shall not carry on such business or run such refinery either in his own name or in some other name unless the heir or legatee has, before the expiry of sixty days after the date of such transmission, made to the Administrator an application for the issue of a licence in accordance with the provisions of this Act: Transfer or transmission of business.

Provided that nothing in this section shall be deemed to prohibit the heir or legatee from carrying on business as a dealer or refiner for the aforesaid period of sixty days, and, if he has applied for such licence, until he is granted the licence or is, by a notice in writing, informed by the Administrator that such licence cannot be granted to him.

(2) Where the business of a licensed dealer or refiner is transferred by sale, gift, lease or otherwise, the transferee or lessee, as the case may be, shall not carry on such business or run such refinery either in his own name or in some other name unless he has obtained a licence in accordance with this Act to carry on such business or to run refinery.

(3) The provisions of section 54 shall apply to the gold in the possession, custody or control of an heir, legatee, transferee or lessee referred to in sub-section (1) or sub-section (2) who does not intend to carry on business as a licensed dealer or refiner or whose application for the issue of a licence has been rejected, as they apply to the gold in the possession, custody or control of a licensed dealer or refiner whose application for the renewal of a licence has been rejected, or the period of validity of whose licence has expired, or whose licence has been cancelled.

Prohibition of buildings for carrying on unlicensed refinery.

**105. No person,—**

(a) being the owner, lessor or landlord of any premises or the agent of such owner, lessor or landlord, shall let the same or any part thereof with the knowledge that the same or part thereof is intended to be used as a refinery or wilfully allow any person to use such premises or any part thereof as a refinery unless the refiner has been licensed under this Act; or

(b) being the tenant, lessee or occupier or any person in charge of any premises, shall use, or allow any person to use, such premises or any part thereof as a refinery unless the refiner has been licensed under this Act.

Officers required to assist Gold Control Officer.

**106. All officers of police and all officers of Government engaged in the collection, or prevention of evasion, of revenue are hereby required and empowered to assist the Gold Control Officers in the execution of the provisions of this Act or of any rule or order made thereunder.**

Recovery of sums due to Government.

**107. In respect of any penalty imposed under this Act and any other sum of any kind payable to the Central Government under any of the provisions of this Act or of any rule or order made thereunder, the Gold Control Officer, who is empowered to impose such penalty or to require the payment of such sum, may deduct the amount of the penalty or such sum from any money owing to the person from whom such penalty or such sum may be recoverable or due, or may recover such amount or sum by attachment and sale of the goods belonging to such person; and if the amount of the penalty or other sum is not so recovered, the Gold Control Officer may prepare a certificate signed by him specifying the amount or other sum due from the person liable to pay the amount or sum and send it to the Collector of the district in which such person resides or conducts his business and the said Collector, on receipt of such certificate, shall proceed to recover from the said person the amount or sum specified therein as if it were an arrear of land revenue.**

Secrecy and fidelity.

**108. (1) All particulars contained in any return or declaration made or accounts, registers or other documents produced in accordance with this Act shall, save as otherwise provided in sub-section (3), be treated as confidential, and notwithstanding anything contained in the Indian Evidence Act, 1872, no court shall be entitled to require the Administrator or any person authorised by the Administrator under this Act or any officer or other employee of Government to produce before it any such return, declaration, accounts, registers or other documents or any part thereof or to give evidence before it in respect thereof.**

(2) The Administrator or any person exercising any powers or performing any functions under this Act shall not divulge—

(i) any information contained in any return or declaration made to, or any account, register or other document produced before, or inspected by him, or

(ii) any other fact or information which comes to his knowledge by virtue of his office or in the course of his duty.

(3) The Administrator or any gazetted officer authorised by him in this behalf may request any officer of Government or the Reserve Bank of India to furnish any information relating to any particulars contained in any return or declaration made to, or any accounts, registers or other documents produced before or inspected by such officer under the provisions of any law if, in the opinion of the Administrator or the gazetted officer aforesaid, such information is necessary for the implementation of any provisions of this Act; and when such request is made, the officer of Government or Reserve Bank of India, as the case may be, shall comply with such request notwithstanding the provisions of any such law forbidding the furnishing of such information.

(4) Nothing in this section shall apply to, and in relation to, the disclosure of any information referred to in sub-section (1) or sub-section (2)—

(a) for the purposes of any prosecution for any offence against this Act, or

(b) to any officer of Government where it is necessary to make such disclosure to such officer for the purposes of this Act or of any other law.

109. (1) No suit, prosecution or other legal proceeding shall lie against the Central Government, the Administrator, any Gold Control Officer or any person authorised by the Central Government or the Administrator for performing any functions under this Act for anything which is in good faith done or intended to be done under this Act or any rule or order made thereunder.

Protection of action taken in good faith.

(2) No suit or other legal proceeding shall lie against the Central Government or the Administrator or any person, authorised by the Central Government or the Administrator for performing any functions under this Act, for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act or any rule or order made thereunder.

Power to  
amend.

**110.** Where, on the recommendation of the Administrator or otherwise, the Central Government is of opinion that it is necessary, or expedient in the public interest so to do, it may, by order and subject to such conditions, if any, as it may specify in the order exempt any dealer or any refiner or any other person from the operation of all or any of the provisions of this Act and may, as often as may be, revoke or modify such order.

Procedure  
in respect  
of gold  
seized by  
police  
officers.

**111.** (1) Where any police officer seizes any gold which is alleged or suspected to have been stolen or which is found under circumstances which create suspicion of the commission of an offence, such police officer shall forthwith report the seizure of such gold to the nearest Gold Control Officer of or above the rank of a Superintendent of Central Excise.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, in every case referred to in sub-section (1), the police officer shall immediately after the dismissal of the complaint or the conclusion of the inquiry or trial cause such gold to be conveyed and delivered to the nearest Gold Control Officer of or above the rank of a Superintendent of Central Excise.

5 of 1898.

Effect of  
Act  
and  
rules, etc.,  
inconsis-  
tent with  
other  
enact-  
ments.

Presump-  
tion as to  
orders.

**112.** The provisions of this Act or any rule or order made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act.

1 of 1872.

Service  
or order,  
decision,  
etc.

**113.** Where an order purports to have been signed by the Administrator or any person authorised in this behalf in exercise of any power conferred by or under this Act a court shall presume, within the meaning of the Indian Evidence Act, 1872, that such order was so made by that person.

**114.** Any order or decision passed or any summons or notice issued under this Act, shall be served—

(a) by tendering the order, decision, summons or notice, or sending it by registered post, to the person for whom it is intended or to his agent; or

(b) if the order, decision, summons or notice cannot be served in the manner provided in clause (a), by affixing it on the notice board of the office of the Gold Control Officer.

115. (1) The Central Government may, by notification, make rules for carrying out the purposes of this Act. Power to make rules.

(2) In particular, and without prejudice to the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) fineness, dimensions, weight and description of a standard gold bar;

(b) particulars to be stamped on a standard gold bar, article or ornament;

(c) forms of—

(i) monthly accounts to be submitted by public religious institutions;

(ii) declarations;

(iii) licences and applications for the issue or renewal thereof;

(iv) certificates and applications for the issue or renewal thereof;

(v) declarations to be made as to recovery of gold by a silver refiner;

(vi) accounts and returns to be submitted by a person acquiring gold under any permit or other authority;

(vii) permits to be granted under this Act;

(viii) returns to be submitted by a licensed dealer or refiner;

(ix) identity card of an artisan;

(x) register of artisans;

(xi) accounts to be maintained by a licensed dealer or refiner or a certified goldsmith;

## (d) conditions, limitations and restrictions subject to which—

(i) a dealer may sell, deliver, transfer or otherwise dispose of any gold on the hypothecation, pledge, mortgage or charge of which he had advanced any loan;

(ii) a refiner may refine gold;

(iii) a licensed refiner may buy, acquire, accept or receive, gold, or melt, assay, refine, extract or alloy gold or subject it to any other process, or sell, deliver, transfer or otherwise dispose of any gold;

(iv) under which a licensed dealer may buy, acquire, accept or receive or sell, deliver, transfer or dispose of gold;

## (e) fees or charges to be paid—

(i) in respect of applications for the issue or renewal of licences or certificates;

(ii) for exercising supervision over the making, manufacturing or preparing any article or thing made of, or containing, gold of any purity;

(iii) for any appeal or application for revision;

## (f) period—

(i) of validity of a licence, certificate or permit;

(ii) within which returns and declarations as to gold should be submitted by dealers, refiners and other persons;

(g) manner in which samples of gold may be taken from any dealer, refiner or other person and the person to whom such samples may be sent for assay or analysis;

## (h) manner—

(i) in which accounts are to be submitted by public religious institutions;

(ii) of endorsement on a declaration, when any gold is acquired or parted with;

(iii) of publication of notices and orders;

(i) regulating the use and consumption of gold by industrial users and other persons;

(j) any other matter which is required to be, or may be, prescribed.

(3) Every rule made by the Central Government under this section shall be laid, as soon as may be, after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

116. (1) Where, by this Act, a power has been conferred on the Central Government or the Administrator to make any authorisation or exemption or to make any order or direction, then, such power may be exercised by a general or special order.

Power of  
Central  
Govern-  
ment and  
Adminis-  
trator to  
empower  
or  
authorise  
by general  
or special  
order.

(2) Where, by this Act, a power has been conferred on the Central Government or the Administrator to empower or authorise any officer, then, such officer may be empowered or authorised, as the case may be, by name or by virtue of office.

18 of 1965.  
6 of 1968.

117. (1) The Gold (Control) Act, 1965, and the Gold (Control) Ordinance, 1968, are hereby repealed.

Repeal and  
savings.

6 of 1968.

(2) Notwithstanding such repeal, anything done or any action taken, including any notification, order or appointment made, direction given, notice, licence or certificate issued, permission, authorisation or exemption granted, confiscation adjudged, penalty or fine imposed, or forfeiture ordered, whether under the Gold (Control) Ordinance, 1968, or Part XIA of the Defence of India Rules, 1962, shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done, taken, made, given, issued, granted, adjudged, imposed or ordered, as the case may be, under the corresponding provision of this Act, as if this Act had commenced on the 29th day of June, 1968.

118. If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, do anything (not, inconsistent with the provisions of this Act) which appears to it to

Power to  
remove  
difficulties.

be necessary for the purpose of removing the difficulty:

Provided that no such power shall be exercised after the expiry of a period of two years from the commencement of this Act.

## STATEMENT OF OBJECTS AND REASONS

In the economic interests of the community, a control was imposed on the production, manufacture, supply, distribution, use and possession of, and business in gold, ornaments and other articles of gold by issue of the Gold Control Rules which were promulgated on the 10th of January, 1963, as Part XIIA of the Defence of India Rules, 1962. In 1965, Parliament endorsed the Govt.'s policy underlying the Gold Control measures and enacted the Gold (Control) Act, 1965. However, before this Act could be brought into force, the basic pattern of control, in response to the opinions expressed in Parliament and outside, was modified. To give effect to these modifications, the Defence of India (Fourth Amendment) Rules, 1966, were notified on 1st of November, 1966, which, *inter alia*, provided for withdrawal of the 14 carat purity restriction on the manufacture of ornaments, ban on private possession of primary gold, declaration of holdings of ornaments above specified limits, and a stricter government control over gold refineries with the ultimate object of bringing gold refining under State ownership.

In view of the basic change in the pattern of control, the Gold (Control) Act, 1965, could not be brought into force in its existing form. To bring the 1965 Act into conformity with the modified pattern of control would have necessitated a large number of amendments in almost all the important provisions which would have made the law cumbersome and somewhat difficult for the public to comprehend and for the officers to administer. Accordingly, a self-contained Bill was necessary.

In the meanwhile, consequent on the revocation of the Proclamation of Emergency, the Gold (Control) Ordinance, 1968, was promulgated by the President on the 29th of June, 1968 with a view to continuing the law relating to Gold Control. The Ordinance repealed Part XIIA of the Defence of India Rules, 1962. In the main, it incorporated the provisions existing in the Defence of India Rules, 1962, with necessary changes of drafting and arrangement. In the light of the experience gained from the actual working of the Gold Control measure, some new provisions were also introduced with a view to removing administrative lacunae and providing certain additional facilities for the general public.

This Bill has been prepared as a self-contained Bill [in supersession of the Gold (Control) Act, 1965] to replace the Gold (Control) Ordinance, 1968. The Bill incorporates the existing provisions of the Ordinance which have been briefly explained in the 'Notes on Clauses'.

NEW DELHI;  
*The 8th July, 1968.*

MORARJI R. DESAI.

**PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF  
THE CONSTITUTION OF INDIA**

[Copy of letter No. 1/8/68-G.C. II, dated the 8th July, 1968 from Shri Morarji Desai, Deputy Prime Minister and Minister of Finance to the Secretary, Lok Sabha].

The President having been informed of the subject matter of the Gold (Control) Bill, 1968, namely, to provide, in the economic and financial interests of the community, for the control on the production, manufacture, supply, distribution, use and possession of, and business in, gold, ornaments and other articles of gold and for matters connected therewith and incidental thereto, has recommended, under clause (3) of article 117 of the Constitution, the Bill for consideration by the Lok Sabha.

*Notes on clauses*

[In the main, the Bill incorporates the provisions and follows the arrangement of the Gold (Control) Ordinance, 1968. In these notes, "Rule" means a rule of the Defence of India Rules, 1962, and "section" means a section of the Gold (Control) Act, 1965.]

*Clause 2* deals with the definitions which generally follow the existing definitions in Part XIIA of the Defence of India Rules, 1962, or in the Gold (Control) Act, 1965. The definitions of the terms "coin", "commencement of Part XIIA of the Defence of India Rules, 1962", "declaration", "gold coin", "Gold Control Officer", "licensed dealer", "licensed refiner", "prescribed" and "value" have now been introduced for facility of reference in the text of the Bill. An *explanation* has been added to the definition of the term "ornament" so as to exclude crude manufactures of gold, which, in reality, are nothing but gold bullion, from the facility available in law for the acquisition, sale and possession of ornaments.

*Clause 3* exempts from the operation of Gold Control law any gold belonging to Government or any refining etc. done by Government for manufacturing primary gold for its own use. It is broadly on the lines of the existing provision vide Rule 126W and section 38.

*Clause 4* provides for appointment of Administrator and Gold Control Officers and defines their functions.

*Clauses 5, 7 and 8* are based on the existing provisions vide Rules 126T, 126S and 126X and sections 21, 35(1) and 39.

*Clause 6* deals with the Administrator's powers to call for returns as to receipt or sale of hypothecated gold and is on the same lines as the existing provision vide sub-rule (1A) of Rule 126F. The only change is contained in sub-clause (2) which enables examination of the accounts, etc., of the person who advances loans, etc., against gold.

*Clause 9* deals with restriction regarding acquisition and possession of gold and is generally based on the corresponding provisions contained in Rule 126H, with suitable drafting changes. A new provision has been made in sub-clause (5) permitting acquisition or transfer, by way of gift or exchange, of gold coins not exceeding five in number.

**Clause 10** deals with restrictions on the sale or transfer of gold acquired under any authorisation made by the Administrator and is generally based on the existing provisions vide Rule 126H (2) (e) and section 5(2) (e), with a new provision made in sub-clause (1) for furnishing of accounts and returns, etc., by the permit holders.

**Clauses 11 and 12.**—Clause 11 deals with restriction on obtaining of loans on hypothecation of primary gold and undeclared articles/ornaments. Clause 12 deals with restriction on refining, melting, making, manufacturing, etc., of primary gold, articles and ornaments. These are generally based on the existing provisions vide Rules 126D(1A), 126B(1) (c) and sections 6(1) and 3(1) (c).

**Clauses 13 to 16** deal with possession and acquisition of gold by public religious institutions and disposal of gold received by them as offerings. These are based on the existing provisions vide sub-rules (4) to (8) of Rule 126H and section 15, with some drafting changes.

**Clause 17** deals with declarations as to articles or ornaments and in substance, follows the existing provisions contained in Rule 1261, as modified by Defence of India (Fourth Amendment) Rules, 1966, with some drafting changes. Sub-clause (11) has the effect of making the possession of gold which is required to be declared, an offence if it is not so declared; and sub-clause (12) empowers the Adjudicating Officer to call for a declaration from a person upon whom a penalty is imposed or whose gold is confiscated for failure to make a declaration. According to sub-clause (7), which is a new provision, the limits specified in sub-clause (5) in relation to the requirement of declaration of ornaments/articles will not apply to any gold owned, possessed, held or controlled by a licensed dealer or refiner in his personal capacity. They will have to declare their entire personal holdings.

**Clause 18** deals with licensing of refiners and in substance, follows the existing provisions contained in Rule 126E and section 8, with necessary drafting changes. The criteria prescribed under sub-clause (6) have been enlarged by inclusion of an additional criterion, namely, "the existence of any refinery established or run by Government". Sub-clause (9) is a new provision which requires the licensed refiners to ensure that the person employed by them in the refinery comply with the law.

**Clause 19** spells out what a refiner can manufacture and cannot manufacture and corresponds in substance to the provision contained in sub-rule (1) (b) of Rule 126B, with some drafting changes.

*Clauses 20 to 22 deal with stamping of standard gold bars and acquisition or sale or delivery of gold by refiners. These are based on existing provisions vide sub-rules (1), (4) and (5) of Rule 126CC and Rule 126H (2) (a) with some modifications.*

*Clause 23 provides for prescription of conditions for the functioning of refiners. These follow in substance the existing provisions vide parts of sub-rules (1) and (2) of Rule 126CC and Rule 126(H) (2) (a) and parts of sections 4 and 5, with some modifications.*

*Clause 24 prohibits possession by a refiner of gold not included in any return and corresponds to Rule 126H(1) and section 5(1). Clause 25 is a new provision for the refiners and requires them not to keep in the refinery gold which is not in any of the refiner's stock-in-trade. Similar provision existed with respect to licensed dealers in sub-rule (2) (bb) (ii) of Rule 126H.*

*Clauses 26 and 27.—Clause 26 deals with the gold refiner who also refines silver and other metals, and clause 27 deals with silver refiners who recover gold from such refining. These are based on the existing provisions vide sub-rules (3) and (6) of Rule 126CC.*

*Clause 28 deals with licensing of dealers and is generally based on the existing provisions vide Rule 126E and section 7, with necessary drafting changes. Sub-clause (6) is a new provision which, on the lines of the existing provision for the refiners, lays down the criteria for issue or renewal of a dealer's licence. The issue of a dealer's licence under Gold Control Law is no longer linked with the registration under the Sales-tax law. Sub-clause (7) is a new provision which has the effect of spelling out that a licensed dealer shall function only in the premises specified in the licence and no other dealer shall work in the same premises. Sub-clause (8) is a new provision which requires the licensed dealer to ensure that the artisan or other person employed by him complies with the law in the course of such employment.*

*Clause 29 deals with the restriction on the licensed dealers not to carry on money-lending or other business in the licensed premises. It is based on the existing provision vide section 6(2) (a) and Rule 126D(2) (a).*

*Clause 30 spells out what a dealer can manufacture and, in substance, follows sub-rule 1(a) of Rule 126B and covers the relevant parts of the provisions contained in sections 3 and 4.*

*Clause 31 is a new provision which is intended, on the one hand, to safeguard the interests of the public at large and, on the other*

hand, to check the possible malpractices in relation to the gold that may be clandestinely saved by misrepresenting the ornaments to be of higher purity than the actual purity. It requires the licensed dealers to stamp the purity on the ornaments manufactured or sold by them. Certified goldsmiths, who unlike the licensed dealers, are not permitted under the law to buy gold ornaments or sell ready-made ornaments, but only manufacture ornaments on the orders of their customers, will not be subject to this requirement. An exception has also been made in case of articles or ornaments which, owing to their nature or the smallness of their size, are not capable of being so stamped.

*Clauses 32 and 33* deal with acquisition and possession of gold by licensed dealers. These are generally based on the existing provisions vide Rules 126H (2) (b) and 126H(2) (bb) and section 5(2) (b) with some modifications.

*Clause 34* deals with the restriction on dealers not to keep in their business premises any gold which is not part of their stock-in-trade vide Rule 126H(2) (bb) (ii).

*Clauses 35 to 39.*—Clause 35 deals with the restrictions on the sale or delivery of gold by a licensed dealer and clauses 36 and 38 spell out the exceptions thereto. Clause 37 is an enabling provision for imposition of conditions on the functioning of the dealers. Clause 39 prohibits possession of primary gold by dealers which is not included in any return. Of these, clauses 34, 35 and 39 are, in substance, based on the existing provisions contained in Rule 126H and relevant parts of section 5. Clauses 36, 37 and 38 are new provisions primarily of a clarificatory nature.

*Clause 40* deals with certification of self-employed goldsmiths and, in substance, is based on the existing provisions vide Rule 126HH and section 13. Sub-clause (6), in its proposed form, is a new provision which, in substance, incorporates the provisions contained in sub-rules (1B) (b) and (3) of Rule 126HH with necessary modifications.

*Clauses 41 to 44.*—Clause 41 spells out what a certified goldsmith can manufacture and clause 42 deals with the restriction on acquisition and sale of gold by certified goldsmiths. Clause 43 specifies the quantitative limits on primary gold which a certified goldsmith may possess at any time. Clause 44 spells out the facility available to certified goldsmiths to take assistance of the specialists like die-cutters, enamellers, engravers, etc., for the purpose of manufacturing ornaments. All these clauses are generally based on the existing provisions vide Rule 126HH and section 13. Clause 42, in its proposed

form, is a new provision but in substance conforms to the legal position that obtains at present.

Clause 45 deals with the employment of artisans and issue of identity cards to them. In substance, it is based on the existing provision contained in Rule 126HHH with necessary drafting changes.

**Clauses 46 to 48.**—Clause 46 defines the functions of an "artisan". Clause 47 is of a clarificatory nature and spells out the limits on primary gold which an artisan may have in his possession. Clause 48 deals with the restriction on the acquisition or disposal of gold by an artisan. These clauses are only an amplification of the legal position that obtains under the existing provisions.

**Clauses 49 and 50.**—Clause 49 is a new provision which requires the artisan to work only on the premises of the licensed dealer by whom he is employed; and clause 50 requires him to keep in his possession the identity card issued to him at all times when he works as an artisan and produce it for inspection, when required. These clauses are intended to facilitate control over the artisans.

Clause 51 deals with cancellation or suspension of licences or certificates and is, in substance, based on the existing provisions contained in Rule 126E, and section 9. The new features are that it covers not only licences but also certificates and it provides for suspension of licences/certificates pending enquiry. It is being clarified that a licence or certificate which is suspended or cancelled, shall be surrendered to the issuing authority.

**Clauses 52 to 55.**—Clause 53 is a new provision and deals with the effect of change in the partnership of a firm which holds a licence under the Gold Control Rules. Clause 52 provides for cancellation of licences or certificates on the application of the concerned dealer, refiner or goldsmith. Clause 54 provides for disposal of gold in the possession of a dealer, refiner or goldsmith in certain cases. Clause 55 deals with display of licences. In substance, these clauses are based on the existing provisions vide sections 10, 11 and 12 and Rule 126E with some modifications.

**Clauses 56, 57 and 58** deal with prescription of accounts to be maintained and returns to be furnished by dealers, refiners, etc., and provide for production and inspection of such accounts. These are generally based on the existing provisions vide Rules 126G, 126F and sections 19 and 20 with necessary drafting changes. Sub-clause (3) of clause 56 is on the lines of sub-rule (1) of Rule 126H with the change that the restriction on possession is relatable to the entries in the prescribed accounts.

*Clause 59* deals with the power to search premises. A distinction is made between the search of business premises of a person who holds a "licence" or "certificate" and other premises. It is generally based on the existing provisions namely, sub-rules (1) (a) and 2(a) of Rule 126L and sub-sections (1) (a) and (2) (a) of section 26 with some drafting changes. An additional safeguard is being made that the search of a residential premises or a premises of a person who does not hold a "licence" or "certificate" shall not be conducted without an authorisation from a Gold Control Officer not below the rank of a Superintendent of Central Excise who is empowered by the Central Government to issue such authorisation.

*Clauses 60 to 63.*—Clause 60 deals with power to search persons. Clauses 61 and 63 spell out the conditions under which a search shall be conducted and the scope of the power to search. Clause 62 deals with power to search vehicles, etc. These are generally based on the existing provisions vide section 26 and Rule 126L with necessary drafting changes.

*Clauses 64 and 65.*—Clause 64 deals with power to summon persons to give evidence and produce documents. Clause 65 deals with power to call for information, etc. These are based on the existing provisions vide section 27 and sub-rules (13) and (14) of Rule 126L.

- The wording of clause 64 has been amplified on the lines of the corresponding provision contained in section 108 of the Customs Act, 1962.

*Clause 66* is a new provision empowering the Gold Control Officers to retain or impound the documents produced before them. It is, in substance, on the lines of the provision contained in section 132 of the Income-tax Act, 1961.

*Clauses 67 to 71.*—Clause 67 deals with the power of seizure. Clause 68 raises certain presumption as to the documents produced or seized under the Act. Clause 69 deals with power to arrest. Clause 70 applies the provisions of sections 102 and 103 of the Code of Criminal Procedure, 1898 to the searches and seizures under the Act. Clause 71 deals with power to record statement. These are generally based on the existing provisions with some drafting changes vide section 26 and Rule 126L. The provision in clause 67 in relation to the documents seized has been amplified on the lines of the corresponding provision contained in section 132 of the Income-tax Act, 1961.

*Clause 72* deals with confiscation of gold. It is based on the existing provision vide sections 29(1) and sub-rule (1) of Rule 126M. with some drafting changes. Sub-clause (3) is a new provision in

relation to gold which is found mixed with some goods from which it cannot be separated, as for example alloyed with silver, etc. A provision similar to sub-clause (3) exists in section 120(2) of the Customs Act, 1962. Sub-clause (4) is a new provision and provides for confiscation of offending gold notwithstanding any change in its form. It is on the lines of the provision contained in section 120 (1) of the Customs Act, 1962.

*Clause 73* deals with confiscation of conveyances and, in substance, corresponds to section 28(2) and sub-rule (11) (b) of Rule 126L. The other provisions relating to liability of conveyances to confiscation contained in section 28(1) and Rule 126L (11) (a) have been dropped.

*Clause 74* provides for allowing of option for payment of fine in lieu of confiscations and is generally on the lines of the existing provisions *vide* Rule 126M(8) and section 30(8).

*Clauses 75, 77 and 78.*—*Clause 75* deals with the liability to penalty. *Clause 77* clarifies that any reference to gold in Chapters XII to XVI is to be construed as gold of any purity. *Clause 78* lays down that, confiscation or penalty in departmental adjudication will not prevent any other punishment under this Act or any other law. These clauses follow the existing provisions, namely section 29(2), *Explanation* below section 26(13), section 30(9) and Rule 126L(16), *Explanation* to Rule 126L(16) and Rule 126M(8) (b).

*Clause 76* is a new provision of a general nature which provides for the imposition of penalty for contraventions for which no penalty is specifically prescribed elsewhere. A similar provision exists in section 117 of the Customs Act, 1962.

*Clauses 79 and 80* deal with the Gold Control Officer's powers of adjudication and the procedure to be followed in that regard. While officers of the rank of Collectors of Central Excise and of Customs will exercise such powers without any limit, the Gold Control Officers of lower ranks will, on being so notified by the Central Government, exercise the powers of adjudication subject to such limits as the Government may specify. *Clause 80* follows the corresponding provision contained in section 30(1) with some drafting changes.

*Clause 81* relates to appeals and is based on the existing provisions contained in Rule 126M(3) and section 30(2) with some modifications. It has been provided that appeals under this section may also lie to the Appellate Collectors of Customs if so directed by the Government. A provision is also being made for extension by the appellate authority, in deserving cases, of the time limit prescribed for preferring appeals. The powers of the appellate authority are also being suitably spelt out.

*Clauses 82 and 83* deal respectively with Administrators' and Central Government's powers of revision. These are generally based on the existing provisions, namely, sub-sections (5) and (6) of section 30 and sub-rules (3A) and (6) of Rule 126M, with some drafting changes. Suitable time limits have been prescribed for *suo motu* initiation of revisionary proceedings by the Administrator or the Central Government which have the effect of prejudicially affecting any person.

*Clauses 84 and 85.*—Clause 84 deals with the powers of the Adjudicating Officer and clause 85 spells out the finality of the various orders. These are based on the corresponding provisions contained in sub-sections (3), (4) and (7) of section 30 and sub-rules (4), (5) and (7) of Rule 126M.

*Clauses 86, 87, 88, 90, 91 and 92* provide for prosecution and punishment for various contraventions of the Gold Control law. These are generally based on the existing provisions *vide* Rule 126P and section 31. The punishment prescribed under clauses 86 and 90 has been stepped up to a maximum of 3 years with a minimum of 6 months, subject to the provision that the court may, in special circumstances, impose a lesser sentence than the prescribed minimum. The punishment prescribed under clauses 87 and 88 is a maximum of 2 years. Under clause 88 for the second and subsequent offence, the prescribed maximum sentence may extend up to 3 years, with a minimum of 6 months. Under clause 91, the punishment prescribed may extend to one year or fine or both and under clause 92 the punishment prescribed has been stepped up from one month to 3 months.

*Clause 94* deals with the offences by companies and follows the existing provision contained in section 32.

*Clause 98* spells out when a court can take cognizance of an offence against this Act and follows the provision contained in section 33 and Rule 126Q(1) with some modifications.

*Clause 99* deals with how the offences under this Act are to be tried and is, in substance, similar to the provision contained in sub-rule (4) of Rule 126P and section 138 of the Customs Act, 1962, with some drafting changes.

*Clauses 89, 93, 95, 96 and 97* are largely new provisions. Clause 89 provides for punishment of the offence of abetment of contravention of the Act and defines in what circumstances a licensed dealer, refiner or goldsmith will be deemed to have abetted such contravention. Clause 93 provides for forfeiture by the court of any implement, instrument, etc., which is used in or in connection with con-

travention of the Act. It is on the same lines as section 10 of the Central Excises and Salt Act, 1944. Clause 95 provides for punishment of Gold Control Officers for vexatious searches, arrests and seizures; and clause 96 provides for punishment of Gold Control Officers for failure in or desertion of duties and for aiding in or conniving at contravention of the Gold Control law. [Earlier, only the failure in or desertion of duty was punishable under Rule 126S(2) and section 35 (2) by application of section 23 of the Central Excises and Salt Act, 1944.] Clause 97 provides for punishment of a person who wilfully or maliciously gives false information causing any arrest, search or seizure to be made under this Act.

*Clauses 100, 102, 104 and 105.*—Clause 100 which raises certain presumption as to ownership of gold, clause 102 which deals with power to take samples, clause 104 which deals with transfer or transmission of business, clause 105 which deals with restriction on use of buildings for establishing unlicensed refinery, are generally based on the existing provisions with some drafting changes vide sections 16(7), 26(12), 24, 23 and Rules 126II, 126L(15), 126N and 126K.

*Clause 101* is a new provision which provides for precautions to be taken by licensed dealers, refiners and certified goldsmiths before acquiring any gold.

*Clause 103* empowers the Central Government to delegate any of the powers exercisable by it under the Act.

*Clauses 106, 107, 108, 109, 110, 112 and 113.*—Clause 106 which requires officers of police, etc., to assist the Gold Control Officers, clause 107 which prescribes the method of recovery of sums due to Government under this Act, clause 108 which provides for secrecy and fidelity, clause 109 which envisages protection of action taken in good faith, clause 110 which confers the power to exempt, clause 112 which defines the effect of the Act and rules, inconsistent with other enactments, and clause 113 which raises certain presumptions as to orders, etc., are based on existing provisions with some drafting changes vide sections 35(2), 25, 34, 36, 37 and 41 and Rules 126S(2), 126O, 126R and 126U.

*Clause 111* is a new provision which lays down the procedure in respect of gold, etc., which may be seized by the police on suspicion. It is on the same lines as the provision contained in section 180 of the Sea Customs Act, 1878.

*Clause 114* is a new provision and makes the prescription in regard to service of order, decision, etc., made under this Act. This is mainly procedural.

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*Clause 115 confers rule-making power and follows the similar provision contained in section 42.*

*Clause 116 is a new provision of a clarificatory nature which provides that the power to issue any authorisation or exemption, etc., may be exercised by a general or special order and that any officer required to be empowered or authorised under this Act may be so empowered or authorised by name or by virtue of his office.*

*Clause 117 is the repeal and savings clause.*

*Clause 118 provides for removal of difficulties.*

## FINANCIAL MEMORANDUM

The Bill is in supersession of the Gold (Control) Act, 1965. It seeks to replace the Gold (Control) Ordinance, 1968 and provides for licensing of refiners and dealers and certification of goldsmiths, prohibits the possession of primary gold, restricts the manufacture and acquisition of articles of gold and provides for declaration of ornaments above specified limits. The other provisions made in the Bill include the furnishing of returns and maintenance of accounts by various classes of persons, dealers, refiners, public religious institutions, etc. Enforcement of this measure will involve extra work and necessitate the employment of some staff.

2. Sub-clause (1) of clause 4 provides for appointment of an Administrator. He would need a necessary complement of Secretariat to assist him in his work. The Administrator and the Secretariat are already in position and it is proposed to continue them. The recurring expenditure on requirement of personnel and finance for the Administrator and the Secretariat is estimated as follows:—

	Number	Annual emolu- ments Rs.
Administrator	1	33,000
Headquarters:		
1. Deputy Secretary	1	19,200
2. Under Secretary	1	14,400
3. Ministerial Staff	13	48,100
4. Class IV Staff	2	2,500
Regional Office:		
1. Deputy Secretary	1	18,000
2. Research Officer	1	10,000
3. Ministerial Staff	16	72,750
4. Class IV Staff	3	4,875
TOTAL		2,22,825

3. Sub-clause (2) of clause 4 of the Bill provides for appointment of Gold Control Officers. Gold Control is enforced primarily through the officers of the Central Excise Department who, for this purpose, will be notified as Gold Control Officers. However, to cope with the extra work that the enforcement of this measure involves, some additional staff has been provided. It is proposed to continue the same. The recurring expenditure on the requirement of personnel and finance under this Head is estimated to be as follows:—

	Number	Annual emolu- ments Rs.
<b>Gold Control Officers in the field formations:</b>		
1. Deputy Collectors	4	69,600
2. Superintendents, Class II	40	3,57,600
3. Inspectors	254	12,49,680
4. Ministerial Staff	98	2,44,000
5. Incidental expenses		6,00,000
	<b>TOTAL</b>	<b>25,20,880</b>

4. Reference to rehabilitation benefits to the goldsmiths who have been affected by Gold Control has been made in sub-clause (4) of clause 40. The Central Government advances funds to the State/Union territory Governments for the rehabilitation assistance schemes. These rehabilitation assistance schemes are administered by the officers of the State Governments for which the expenditure is met by the Centre. The recurring expenditure on personnel and finance for the State Government officers is estimated as follows. (As the work of rehabilitation of displaced goldsmiths nears completion, the expenditure under this Head is likely to go down.)

	Number	Annual emolu- ments. Rs.
<b>State Gold Control Officers:</b>		
1. Gold Control Officers		
Full time	5	
<i>Plus</i>		
Part time	9	1,14,000
2. Office Establishment	118	2,36,000
	<b>TOTAL</b>	<b>3,50,000</b>

5. For the purpose of the rehabilitation assistance schemes for displaced goldsmiths, who do not revert to their old profession, an expenditure of Rs. 97.25 lakhs is anticipated during the current financial year. This is essentially of non-recurring nature and is likely to go down as the work of rehabilitation nears completion. Further, the rehabilitation loans advanced to the goldsmiths are recoverable in instalments in due course.

6. Apart from the receipts that accrue as a result of confiscation and penalties, the fees for licences and certificates, etc., are expected to yield in a year an income of approximately Rs. 15 lakhs. Thus the Bill, if enacted, is likely to involve a net recurring expenditure, out of the Consolidated Fund of India, of the order of Rs. 15 to 16 lakhs.

7. The staff referred to in paragraphs 2, 3 and 4 above is already in position. No addition to this staff is contemplated. Therefore, there would be no additional expenditure as such on the requirement of personnel and finance as a result of this Bill, if enacted, than what is being incurred at present on the enforcement of gold control.

## MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 115 of the Bill empowers the Central Government to make rules to carry out the purposes of this Act. The matters in respect of which rules may be made are specified in sub-clause (2) and they relate, *inter alia*, to specifications of dimensions, weight, fineness and markings for standard gold bars, particulars to be stamped on ornaments, prescription of various forms of licences, certificates, declarations, returns, accounts, permits, identity cards, etc., regulation of the use and consumption of gold by industrial users and other persons and prescription of fees for licences, certificates, etc., for which the maxima have been specified in the Bill.

The delegation of legislative power is, therefore, of a normal character.

## BILL No. 57 of 1968

*A Bill to regulate the procedure for the investigation and proof of the misbehaviour or incapacity of a Judge of the Supreme Court or of a High Court and for the presentation of an address by Parliament to the President and for matters connected therewith.*

BE it enacted by Parliament in the Nineteenth Year of the Republic of India as follows:—

1. (1) This Act may be called the Judges (Inquiry) Act, 1968.      Short title and com-

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.      mencement.

2. In this Act, unless the context otherwise requires,—      Definitions.

(a) "Chairman" means the Chairman of the Council of States;

(b) "Committee" means a Committee constituted under section 3;

(c) "Judge" means a Judge of the Supreme Court or of a High Court and includes the Chief Justice of India and the Chief Justice of a High Court;

(d) "prescribed" means prescribed by rules made under this Act;

(e) "Speaker" means the Speaker of the House of the People.

**Investigation into misbehaviour or incapacity of Judge by Committee.** 3. (1) If notice is given of a motion for presenting an address to the President praying for the removal of a Judge signed,—

(a) in the case of a notice given in the House of the People, by not less than one hundred members of that House;

(b) in the case of a notice given in the Council of States, by not less than fifty members of that Council,

then, the Speaker or, as the case may be, the Chairman may, after consulting such persons, if any, as he thinks fit and after considering such materials, if any, as may be available to him, either admit the motion or refuse to admit the same.

(2) If the motion referred to in sub-section (1) is admitted, the Speaker or, as the case may be, the Chairman shall keep the motion pending and constitute, as soon as may be, for the purpose of making an investigation into the grounds on which the removal of a Judge is prayed for, a Committee consisting of three members of whom—

(a) one shall be chosen from among the Chief Justice and other Judges of the Supreme Court;

(b) one shall be chosen from among the Chief Justices of the High Courts; and

(c) one shall be a person who is, in the opinion of the Speaker or, as the case may be, the Chairman, a distinguished jurist:

Provided that where notices of a motion referred to in sub-section (1) are given on the same day in both Houses of Parliament, no Committee shall be constituted unless the motion has been admitted in both Houses and where such motion has been admitted in both

Houses, the Committee shall be constituted jointly by the Speaker and the Chairman:

Provided further that where notices of a motion as aforesaid are given in the Houses of Parliament on different dates, the notice which is given later shall stand rejected.

(3) The Committee shall frame definite charges against the Judge on the basis of which the investigation is proposed to be held.

(4) Such charges together with a statement of the grounds on which each such charge is based shall be communicated to the Judge and he shall be given a reasonable opportunity of presenting a written statement of defence within such time as may be specified in this behalf by the Committee.

(5) Where it is alleged that the Judge is unable to discharge the duties of his office efficiently due to any physical or mental incapacity and the allegation is denied, the Committee may arrange for the medical examination of the Judge by such Medical Board as may be appointed for the purpose by the Speaker or, as the case may be, the Chairman or, where the Committee is constituted jointly by the Speaker and the Chairman, by both of them, for the purpose and the Judge shall submit himself to such medical examination within the time specified in this behalf by the Committee.

(6) The Medical Board shall undertake such medical examination of the Judge as may be considered necessary and submit a report to the Committee stating therein whether the incapacity is such as to render the Judge unfit to continue in office.

(7) If the Judge refuses to undergo medical examination considered necessary by the Medical Board, the Board shall submit a report to the Committee stating therein the examination which the Judge has refused to undergo, and the Committee may, on receipt of such report, presume that the Judge suffers from such physical or mental incapacity as is alleged in the motion referred to in sub-section (1).

(8) The Committee may, after considering the written statement of the Judge and the medical report, if any, amend the charges framed under sub-section (3) and in such a case, the Judge shall be given a reasonable opportunity of presenting a fresh written statement of defence.

(9) The Central Government may, if required by the Speaker or the Chairman, or both, as the case may be, appoint an advocate to conduct the case against the Judge.

Report of  
Com-  
mittee.

4. (1) Subject to any rules that may be made in this behalf, the Committee shall have power to regulate its own procedure in making the investigation and shall give a reasonable opportunity to the Judge of cross-examining witnesses, adducing evidence and of being heard in his defence.

(2) At the conclusion of the investigation, the Committee shall submit its report to the Speaker or, as the case may be, to the Chairman, or where the Committee has been constituted jointly by the Speaker and the Chairman, to both of them, stating therein its findings on each of the charges separately with such observations on the whole case as it thinks fit.

(3) The Speaker or the Chairman, or, where the Committee has been constituted jointly by the Speaker and the Chairman, both of them, shall cause the report submitted under sub-section (2) to be laid, as soon as may be, respectively before the House of the People and the Council of States.

Powers of  
Committee.

5. For the purpose of making any investigation under this Act, the Committee shall have the powers of a civil court, while trying a suit, under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—

5 of 1908.

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on oath;
- (d) issuing commissions for the examination of witnesses or documents;
- (e) such other matters as may be prescribed.

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6. (1) If the report of the Committee contains a finding that the Judge is not guilty of any misbehaviour or does not suffer from any incapacity, then, no further steps shall be taken in either House of Parliament in relation to the report and the motion pending in the House or the Houses of Parliament shall stand rejected.

address  
for re-  
moval of  
Judge.

(2) If the report of the Committee contains a finding that the Judge is guilty of any misbehaviour or suffers from any incapacity, then, the motion referred to in sub-section (1) of section 3 shall, together with the report of the Committee, be taken up for consideration by the House or Houses of Parliament in which it is pending.

(3) If the motion is adopted by each House of Parliament in accordance with the provisions of clause (4) of article 124 or, as the case may be, in accordance with that clause read with article 218 of the Constitution, then, the misbehaviour or incapacity of the Judge shall be deemed to have been proved and an address praying for the removal of the Judge shall be presented in the prescribed manner to the President by each House of Parliament in the same session in which the motion has been adopted.

7. (1) There shall be constituted a Joint Committee of both Houses of Parliament in accordance with the provisions hereinafter contained for the purpose of making rules to carry out the purposes of this Act. Power to make rules.

(2) The Joint Committee shall consist of fifteen members of whom ten shall be nominated by the Speaker and five shall be nominated by the Chairman.

(3) The Joint Committee shall elect its own Chairman and shall have power to regulate its own procedure.

(4) Without prejudice to the generality of the provisions of subsection (1), the Joint Committee may make rules to provide for the following among other matters, namely:—

(a) the manner of transmission of a motion adopted in one House to the other House of Parliament;

(b) the manner of presentation of an address to the President for the removal of a Judge;

(c) the travelling and other allowances payable to the members of the Committee and the witnesses who may be required to attend such Committee;

(d) the facilities which may be accorded to the Judge for defending himself;

(e) any other matter which has to be, or may be, provided for by rules or in respect of which provision is, in the opinion of the Joint Committee, necessary.

(5) Any rules made under this section shall not take effect until they are approved and confirmed both by the Speaker and the Chairman and are published in the Official Gazette, and such publication of the rules shall be conclusive proof that they have been duly made.

## STATEMENT OF OBJECTS AND REASONS

Under the Constitution, a Judge of the Supreme Court or of a High Court may be removed from office on the ground of proved misbehaviour or incapacity of the Judge after an address has been presented to the President for such removal by each House of Parliament. This Bill seeks to regulate the procedure for the investigation and proof of the misbehaviour or incapacity of a Judge and for presentation of an address to the President.

NEW DELHI;

Y. B. CHAVAN.

*The 6th June, 1968.*

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PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF  
THE CONSTITUTION OF INDIA

(Copy of letter No. 16/34/68-Judl. I/III(ii), dated the 11th July, 1968 from Shri Y. B. Chavan, Minister of Home Affairs to the Secretary, Lok Sabha).

The President having been informed of the subject matter of the Judges (Inquiry) Bill, 1968, recommends under article 117(3) of the Constitution the consideration of the Bill in the Lok Sabha.

## FINANCIAL MEMORANDUM

The Judges (Inquiry) Bill, 1968, if enacted, would involve expenditure out of the Consolidated Fund of India only when a motion, referred to in clause 3(1) of the Bill, is admitted in either House of Parliament. When such a motion is admitted, a Committee is required to be constituted for making an investigation into the grounds on which the removal of the Judge has been prayed for. When such a Committee is constituted, expenditure will have to be incurred on the following items, namely:—

- (i) payment to the members of the committee, their salaries, allowances and travelling expenditure and payment of salaries, etc., to the secretarial and other staff attached to the members and to the Committee;
- (ii) medical examination of the Judge where it is necessary to determine whether the Judge is suffering from any physical or mental incapacity;
- (iii) payment to the Advocate appointed by the Central Government to conduct the case against the Judge;
- (iv) the facilities to be accorded to the Judge for defending himself;
- (v) summoning or examining witnesses or for discovery or production of documents or receiving other evidence, etc.

2. Since the investigation contemplated by the Bill is not likely to be a regular feature, there is no likelihood of a regular recurring or non-recurring expenditure consequent on the enactment of the Bill. It is not, therefore, possible to estimate accurately at this stage what will be the total recurring or non-recurring expenditure consequent on the enactment of the Bill. Such expenditure will depend on the composition of the committee, the duration of the inquiry, the nature of the charges to be investigated into and other matters referred to above. If a committee is constituted for any one inquiry with a Judge of the Supreme Court, a Chief Justice of a High Court and a

jurist drawing emoluments equal to that of a Chief Justice of a high Court, and that committee works whole-time for a period of three months, the estimated expenditure will come to about rupees one lakh. In such a case no non-recurring expenditure is likely to be involved.

## MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 7 of the Bill empowers the Joint Committee of the two Houses of Parliament to make rules to carry out the purposes of the Bill, when enacted. The matters in respect of which such rules may be made relate to the manner of transmission of a motion adopted in one House to the other House of Parliament, presentation of address to the President for the removal of a Judge, and grant of travelling and other allowances payable to the members of the Committee constituted under clause 3 of the Bill, etc. These are matters of detail and the delegation of legislative power is of a normal character.

S. L. SHAKDHER,  
*Secretary.*

